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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 10, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Memorandum of March 6, 2012

Delegation of Responsibility Under the Senate Resolution of Advice and Consent to Ratification of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation; and the Defense Trade Cooperation Treaties Implementation Act of 2010

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you, in consultation with the heads of other executive departments and agencies, as appropriate:

(1) the function of the President to make all certifications, reports, and notifications to the Congress prior to entry into force of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, as well as to provide annual reports thereafter, consistent with section 2 of the Senate Resolution of Advice and Consent to Ratification of the Treaty, dated September 29, 2010; and

(2) the responsibility of the President, under the Defense Trade Cooperation Treaties Implementation Act of 2010 (the ''Act''), to provide congressional notification of amendments to the Implementing Arrangements that are made pursuant to section 105(c) of the Act.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 6, 2012

[FR Doc. 2012–6449
Filed 3–14–12; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 28

Personnel Appeals Board; Procedural Rules

AGENCY: Government Accountability Office Personnel Appeals Board.

ACTION: Final rule; technical amendment.

SUMMARY: The rule adopts as final an interim rule published December 9, 2011, which amended regulations to reflect a change in law concerning grievance procedures and changed some specific terms in the regulations to ones more commonly used throughout the government. Additionally, the PAB is moving its offices as of March 19, 2012, and accordingly, this part is being amended to reflect that move and change the Board's address. The intended effect of this action is to ensure that the public is informed of the final rule and of the Board's address change.

DATES: Effective March 15, 2012.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, or Susan Inzeo, Solicitor, 202–512–6137, Personnel Appeals Board, Room 1566, 441 G Street NW., Washington, DC 20548.

SUPPLEMENTARY INFORMATION: On December 9, 2011, the Government Accountability Office Personnel Appeals Board (the Board or PAB) published an interim rule reflecting a change in law concerning grievance procedures and changing some specific terms in the regulations to ones more commonly used throughout the government. 76 FR 76873, December 9, 2011. The formal period for comments closed on February 7, 2012, and no comments were received. Accordingly, the interim rule amending 4 CFR part 28 which was published at 76 FR 76873 on December 9, 2011, is adopted as a final rule without substantial changes. Additionally, since the PAB is moving its offices as of March 19, 2012, title 4, part 28 of the Code of Federal Regulations is being amended to reflect the change in location and mailing address.

List of Subjects in 4 CFR Part 28

Administrative practice and procedure, Claims, Government employees, Labor-management relations, Reduction in force.

For the reasons set forth in the preamble, the interim rule amending title 4, part 28, Code of Federal Regulations, which was published at 76 FR 76873 on December 9, 2011, is adopted as final, with changes as follows:

PART 28—GOVERNMENT ACCOUNTABILITY OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GOVERNMENT ACCOUNTABILITY OFFICE

■ 1. The authority citation for part 28 continues to read as follows:

Authority: 31 U.S.C. 753.

■ 2. In § 28.11, revise paragraph (c) to read as follows:

§ 28.11 Filing a charge with the Office of General Counsel.

* * * * *

(c) *How to file.* Charges may be filed with the Office of General Counsel by personal delivery (including commercial carrier) or by mail.

(1) A charge may be filed by personal delivery at the Office of General Counsel, Personnel Appeals Board, Room 1562, 441 G Street NW., Washington, DC 20548.

(2) A charge may be filed by mail addressed to the Office of General Counsel, Personnel Appeals Board, Room 1562, 441 G Street NW., Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Office of General Counsel.

* * * * *

■ 3. In § 28.18, revise paragraph (c) to read as follows:

§ 28.18 Filing a petition with the Board.

* * * * *

(c) *How to file.* (1) A petition may be filed by hand delivery to the office of the Personnel Appeals Board, Room 1566, 441 G Street NW., Washington, DC 20548. It must be received by 4 p.m., Monday through Friday, on the date that it is filed.

(2) A petition may be filed by mail addressed to the Personnel Appeals Board, Room 1566, 441 G Street NW., Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

* * * * *

■ 4. In § 28.160, revise paragraph (a) to read as follows:

§ 28.160 Request for records.

(a) Individuals may request access to records pertaining to them that are maintained as described in 4 CFR part 83, by addressing inquiry to the PAB General Counsel either by mail or by appearing in person at the Personnel Appeals Board Office of General Counsel, Room 1562, 441 G Street NW., Washington, DC 20548, during business hours on a regular business day. Requests in writing should be clearly and prominently marked ''Privacy Act Request.'' Requests for copies of records shall be subject to duplication fees set forth in 4 CFR 83.17.

* * * * *

■ 5. In § 28.161, revise paragraph (b) to read as follows:

§ 28.161 Denial of access to information—Appeals.

* * * * *

(b) Any individual whose request for access to records of the PAB General Counsel has been denied in whole or in part by the General Counsel may, within 30 days of receipt of the denial, challenge that decision by filing a written request for review of the decision with the Personnel Appeals Board, Room 1566, 441 G Street NW., Washington, DC 20548.

* * * * *

Steven H. Svartz,

Chair, Personnel Appeals Board, U.S. Government Accountability Office.

[FR Doc. 2012–6216 Filed 3–14–12; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1309

[Docket No. DEA–346]

RIN 1117–AB32

Controlled Substances and List I Chemical Registration and Reregistration Fees

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: This rule adjusts the fee schedule for DEA registration and reregistration fees necessary to recover the costs of the Diversion Control Program relating to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and List I chemicals as mandated by the Controlled Substances Act.

DATES: *Effective:* April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Alan G. Santos, Associate Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Mailing address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

Legal Authority

The Drug Enforcement Administration (DEA) is a component of the Department of Justice and is the primary agency responsible for coordinating the drug law enforcement activities of the United States. DEA also assists in the implementation of the President's National Drug Control Strategy. DEA's mission is to enforce U.S. controlled substances laws and regulations and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacturing, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the U.S., including organizations that use drug trafficking proceeds to finance terrorism. The diversion control program (DCP) is a strategic component of the DEA's law enforcement mission. The DCP implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 801–971), as amended (hereinafter, ''CSA'').[1] DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1321. The CSA, together with these regulations, is designed to help prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes.

Pursuant to the CSA, each controlled substance is classified in one of five schedules based upon its potential for abuse, currently accepted medical use, and the degree of dependence it may cause if abused. 21 U.S.C. 812. Likewise, under the CSA, listed chemicals are separately classified based on their use and importance to the manufacture of controlled substances (List I or List II chemicals). 21 U.S.C. 802(33)–(35). The CSA mandates that DEA register persons and entities who manufacture, distribute, import, or export controlled substances or List I chemicals, and those persons and entities who dispense or conduct research or chemical analysis with controlled substances. These registrants are permitted to handle controlled substances and List I chemicals as authorized by their registration and are required to comply with the applicable requirements associated with their registration. 21 U.S.C. 822, 958. The identification and registration of all individuals and entities authorized to handle controlled substances and List I chemicals establishes a closed system of distribution that DEA is charged to maintain.

Under the CSA, DEA is authorized to charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals. 21 U.S.C. 821 and 958(f). DEA must set fees at a level that ensures the recovery of the full costs of operating the various aspects of its DCP. 21 U.S.C. 886a. Each year, DEA is required by statute to transfer the first $15 million of fee revenues into the general fund of the Treasury, and the remainder of the fee revenues is deposited into a separate fund of the Treasury called the Diversion Control Fee Account (DCFA). 21 U.S.C. 886a(1). On at least a quarterly basis, the Secretary of the Treasury is required to reimburse DEA an amount from the DCFA ''in accordance with estimates made in the budget request of the Attorney General for those fiscal years'' for the operation of the DCP.[2] 21 U.S.C. 886a(1)(B) and (D). A Notice of Proposed Rulemaking (NPRM) proposing an adjusted fee schedule for DEA registration and reregistration was published on July 6, 2011, at 76 FR 39318, with a 60 day comment period. The comment period closed on September 6, 2011.

History of Fees

In 1970, Congress consolidated more than 50 laws related to the control of narcotics and dangerous drugs into one statute—the CSA. The statute was ''designed to improve the administration and regulation of the manufacturing, distribution, and dispensing of controlled substances by providing for a 'closed' system of drug distribution for legitimate handlers of such drugs,'' with criminal penalties for transactions outside the legitimate chain.[3] With the enactment of the CSA, the Bureau of Narcotics and Dangerous Drugs (BNDD) was granted the authority to charge reasonable fees relating to both registration and control [4] of persons and entities engaged in the manufacture, distribution, dispensing, export, and import of controlled substances.[5] To this end, BNDD established a three-

[1] The Attorney General's delegation of authority to DEA may be found at 28 CFR 0.100.

[2] The diversion control program (DCP) consists of the controlled substance and chemical diversion control activities of DEA. These activities are related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals (21 U.S.C. 886a(2)).

[3] H.R. Rep. No. 91–1444 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4566, 4571–4572.

[4] The term ''control'' as defined in 21 U.S.C. 802(5) specifically applies to Part B of Title II of the CSA only (21 U.S.C. 811–814). In general, ''diversion control'' is a broad term encompassing activities related to preventing and detecting the diversion of controlled substances and listed chemicals from legitimate commerce into the illicit market. In 1992, Congress established the Diversion Control Fee Account and required that the fees charged by DEA under its diversion control program be set at a level that ensures the recovery of the full costs of operating the various aspects of that program (Pub. L. 102–395, 106 Stat. 1843). In 2004, Congress amended the CSA and defined ''diversion control program'' and ''controlled substance and chemical diversion control activities'' (Pub. L. 108–447, 118 Stat. 2921, codified in 21 U.S.C. 886a). The ''diversion control program'' means the controlled substance and chemical diversion control activities of the Drug Enforcement Administration. 21 U.S.C. 886a(2)(A). The term ''controlled substance and chemical diversion control activities'' means those activities related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals. 21 U.S.C. 886a(2)(B).

[5] DEA's authority to charge reasonable fees was later expanded to include manufacturers, distributors, importers, and exporters of List I chemicals. The Domestic Chemical Diversion Control Act of 1993, Public Law 103–200, 107 Stat. 2333.

tiered fee structure for companies and individuals wishing to participate in the U.S. controlled substance industry.[6]

In 1973, BNDD was abolished, and all of its functions were transferred to the newly-created DEA, including the authority to charge registrants reasonable fees.[7] In 1982, the General Accounting Office (GAO)[8] advised that the 1971 fee schedule did not adequately recover the costs for the DCP administered by DEA. An increase in fees was proposed and finalized in 1983.[9] All fees collected through 1992 were deposited into the general fund of the United States Treasury.

In 1993, Congress determined that the DCP would be fully funded by fees rather than by appropriations,[10] and established the DCFA as a separate account of the Treasury to ''[ensure] the recovery of the full costs of operating the various aspects of [the diversion control program]'' from fees charged by DEA. 21 U.S.C. 886a(1)(C). Congress also specified the general operation of the DCFA. Each fiscal year, the first $15 million of collected fees are transferred to the general fund of the Treasury and are not directly available for use by the DCP. Fees collected in excess of $15 million are used to reimburse DEA for expenses incurred in the operation of the DCP, in accordance with estimates made in the budget request of the Attorney General. 21 U.S.C. 886a(1).

Shortly after enactment of the 1993 Appropriations Act, DEA published a NPRM proposing to increase the existing fee schedule to comply with Congress's direction to set fees at a level that ensures the recovery of the full costs of operating the DCP.[11] After a comment period, a final rule was published on March 22, 1993, implementing changes to the fee structure and excluding chemical control costs from the calculation of fees.[12] Several registrants impacted by the fee increase challenged it, first in federal district court, where it was upheld, and subsequently on appeal, where it was remanded for additional information to support the fees.[13]

Upon remand, the March 1993 final fee rule was reopened for further comment in 1996.[14] DEA undertook studies and internal reorganizations to enable it to better identify DCP activities and costs, and, in 2002, DEA published for additional public comment more information on the components and activities of the fee-funded DCP.[15] After that publication, the Office of the Inspector General, Department of Justice (OIG) concluded its review of the DCP, and determined that DEA was not adequately supporting the DCP.[16]

In February 2003, DEA published a proposed rule to raise registration and reregistration fees so as to comply with the statutory requirement to charge fees at a level ensuring the recovery of the full costs of operating the various aspects of the DCP.[17] Shortly thereafter, DEA created the Validation Unit to ensure that DCFA-funded expenditures support registration and diversion control-related activities. The Validation Unit reports to the DEA Deputy Administrator and independently reviews specified expenditures attributable to the DCFA. If an expense only partially supports the DCP, such as a field office's rent or utility cost, the Validation Unit determines the amount that may be properly apportioned to the DCFA. On October 10, 2003, a new fee was finalized by publication of a final rule.[18]

Meanwhile, in December 1993, the Domestic Chemical Diversion Control Act of 1993 amended the CSA to require that manufacturers, distributors, importers, and exporters of List I chemicals obtain a registration from DEA. DEA was also authorized to charge ''reasonable fees relating * * * to the registration and control of regulated persons and regulated transactions.'' [19]

In 2004, the CSA was amended to define the DCP as ''the controlled substance and chemical diversion control activities of the Drug Enforcement Administration.'' 21 U.S.C. 886a(2)(A).[20] Furthermore, ''controlled substance and chemical diversion control activities'' means ''those activities related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.'' 21 U.S.C. 886a(2)(B). Congress further provided that reimbursements from the DCFA ''shall be made without distinguishing between expenses related to controlled substance activities and expenses related to chemical activities'' (21 U.S.C. 886a(1)(B)) and amended the language of 21 U.S.C. 821 and 958(f) to be consistent with the definition of the DCP articulated in 21 U.S.C. 886a(2). As a result, all fees collected in excess of $15 million are deposited into the DCFA, and reimbursements by the Secretary of the Treasury are made without distinction between controlled substance and List I chemical activities.

In 2005, based upon internal organizational changes and the 2005 Appropriations Act, DEA proposed an adjusted fee schedule to appropriately reflect all costs associated with the DCP.[21] In July 2006, the OIG reported on its *Follow-up Review of DEA's Efforts to Control the Diversion of Controlled Pharmaceuticals* and recommended that DEA apply more resources to diversion control, including more Special Agent support.[22] The OIG also recommended that DEA increase training for those individuals who support the DCP. The OIG also noted that the diversion of controlled substance pharmaceuticals had dramatically increased over recent years and that the increase coincided with the use of emerging technologies such as the Internet. Twelve comments were received and analyzed in response to DEA's proposed fee rule, and DEA published the final rule on August 29, 2006.[23] Collections associated with that fee adjustment did not begin until FY 2007, on November 1, 2006.

The OIG completed a *Review of DEA's Use of the Diversion Control Fee Account* in 2008 and did not find that any DCFA funds were misused for non-diversion control activities between FY 2004 and FY 2007. To the contrary, the OIG found that DEA did not fully fund

[6] 36 FR 4928 (March 13, 1971); 36 FR 7776 (April 24, 1971).

[7] Reorganization Plan No. 2 of 1973, 38 FR 18380 (July 2, 1973).

[8] GAO/GGD–83–2, October 29, 1982.

[9] 48 FR 14640 (April 5, 1983); 48 FR 56043 (December 19, 1983).

[10] Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Public Law 102–395, codified in relevant part at 21 U.S.C. 886a.

[11] 57 FR 60148 (December 18, 1992).

[12] 58 FR 15272 (March 22, 1993).

[13] *American Medical Association* v. *Reno,* 857 F. Supp. 80 (D.D.C. 1994), *aff'd,* 57 F.3d 1129 (DC Cir. 1995).

[14] 61 FR 68624 (December 30, 1996).

[15] 67 FR 51988 (August 9, 2002).

[16] ''Review of the Drug Enforcement Administration's Control of the Diversion of Controlled Pharmaceuticals,'' I–2002–010, September 2002, www.usdoj.gov/oig/reports/DEA/e0210/index.htm.

[17] 68 FR 7728 (February 18, 2003).

[18] 68 FR 58587 (October 10, 2003). DEA published a correction to this final rule where the internal DEA computer system, Firebird, was identified as being solely funded through appropriations. The Firebird system costs are properly apportioned as a DCP cost as well as a non-DCP appropriations expense. 69 FR 34568 (June 22, 2004).

[19] The Domestic Chemical Diversion Control Act of 1993, Public Law 103–200, 107 Stat. 2333.

[20] Public Law 108–447, Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 2005, signed into law on December 8, 2004.

[21] 70 FR 69474 (November 16, 2005).

[22] ''Follow-Up Review of the Drug Enforcement Administration's Efforts to Control the Diversion of Controlled Pharmaceuticals,'' I–2006–004, July 2006, www.usdoj.gov/oig/reports/DEA/e0604/final.pdf.

[23] 71 FR 51105 (August 29, 2006).

all diversion control costs with the DCFA, as required by law.[24]

The Proposed Rule

It has been more than five years since the last fee adjustment. DEA proposed a new fee schedule by publication of a NPRM on July 6, 2011. 76 FR 39318–41. DEA outlined the scope of the DCP, the need for a new fee calculation, the four different methodologies or options considered for calculating the fee, the proposed weighted-ratio methodology, and the calculation resulting in the proposed fee increase of approximately 33 percent. The fee increase incorporates additional DCP costs identified in the above-mentioned OIG report, as well as an expanded diversion control program required by Congress, and it accounts for a number of current circumstances related to the diversion of controlled substance pharmaceuticals and listed chemicals.

Methodology for Fee Calculation

Fees must be ''set at a level that ensures the recovery of the full costs of operating the various aspects of [the DCP].'' 21 U.S.C. 886a(1)(C). In addition, any methodology for calculating fees must result in fees that are reasonable. 21 U.S.C. 821 and 958(f). As outlined below in responses to comments, DEA must calculate and collect fees prior to actually expending the funds in order to have funds with which to operate the DCP. Moreover, each year DEA is required to transfer the first $15 million of fee revenues into the general fund of the Treasury, with the remainder deposited into a separate fund of the Treasury called the Diversion Control Fee Account or DCFA. 21 U.S.C. 886a(1). On at least a quarterly basis, the Secretary of the Treasury is required to reimburse DEA an amount from the DCFA ''in accordance with estimates made in the budget request of the Attorney General for those fiscal years'' for the operation of the DCP. 21 U.S.C. 886a(1)(B) and (D).

In the NPRM, DEA outlined four alternative methodologies to calculate the registration and reregistration fees. 76 FR 39329–32. These were the Past-Based Option, Future-Based Option, Flat Fee Option, and Weighted-Ratio Option. For each of the options considered, the calculated fees are analyzed for reasonableness by examining: (1) The absolute amount of the fee increase, (2) the change in fee as a percentage of registrant revenue from 2007 to 2012, and (3) the relative fee increase across registrant groups. Additionally, each calculation methodology is re-evaluated for its overall strengths and weaknesses in recovering the full costs of the DCP.

Based on the analysis provided in the NPRM, DEA did not adopt the ''Past-Based Option.'' There are two key reasons for rejecting this methodology. First, the fee increase would be disproportionately burdensome to a small number of registrants. Distributors' fees would increase by over three fold, while the fees for the remaining registrant groups would increase by 10 percent and 32 percent. DEA believes this is unreasonable. Second, the past-based option uses FY 2007–FY 2009 investigation work hour data to set the apportionment of cost to each registrant category. Pre-registration and scheduled investigation costs are assigned to registrant classes and all other costs are recovered on an equal, per-registrant basis. This method is retrospective and assumes that future investigations will be similar to the past. DEA cannot assume that past work hour data accurately reflects future workload because priorities change as the threats change. For example, in order to monitor registrant regulatory compliance and leverage the deterrent effect of scheduled investigations, DEA increased the frequency of all scheduled investigations beginning in 2008. In 2011, DEA began pre-registration investigations of all pharmacies located in the State of Florida in order to address the rampant diversion in south Florida. And in 2010, DEA began conducting nationwide take back events to provide a mechanism for the public to dispose of their unwanted, unused, and expired controlled substance pharmaceutical drugs. The past-based option is vulnerable to short-term fluctuations in priorities which can greatly affect fees among the different categories. As a result, DEA has concluded that past work hour data alone is not the best basis for the calculation of registration fees.

The second option analyzed in the NPRM is the ''Future-Based Option'' which is based on projected work hours for each registrant class using scheduled investigation work plan goals and anticipated/planned resources. Under this option, DEA based its calculations on projected work hour data by registrant group for FY 2012–2014. In other words, the future-based option is based on DEA's projection of work plan goals and the resources required for these years—specifically examining the direct cost of anticipated scheduled investigations.

DEA rejects this methodology because it would result in an unreasonable increase in fees for some registrants and a severe disparity of fees among the registrant groups. The large proportional increase in fees for two registrant categories may not pass the reasonable standard required by statute. The vast disparity in the increase, where fees for manufacturers increase by more than 700 percent while fees for dispensers increase by 26 percent, is unreasonable. This method is unfair to the registrant categories because a variety of factors other than scheduled investigations affect cost allocations. Actual operations typically differ from scheduled work plans due to shifting threats and other operational demands. The future-based option is based on projected work hour data of anticipated scheduled investigations, however, only 3.5% of the workload is directly attributable to scheduled investigations. The remaining 96.5% must be apportioned equally across all registrant categories.

The third option analyzed in the NPRM is called the ''Flat Fee Option.'' This methodology would result in equal fees across all registrant groups regardless of the proportion of DCP costs and resources the registrant group may require (e.g., oversight and investigation resources). The fee calculation is straightforward: The total amount needed to be collected over the three-year period is divided by the total number of registration fee transactions over the three-year period, adjusting for registrants on the three-year registration cycle.

DEA did not select this methodology because it would result in disparate changes in fees among registrant groups. Under this option, fees for manufacturers and distributors would decrease by 89 percent and 78 percent respectively, while fees for practitioners would increase by 34 percent. Thus, setting the fees at the same level across all registrant groups is not reasonable. DEA registrants include some of the largest corporations in the world although the vast majority of registrants are individual practitioners, such as physicians, physician assistants, dentists, and nurse practitioners. To satisfy the reasonable standard, registration fees should account for differences in regulatory investigations and other DCP costs that vary among the registrant categories.

The fourth methodology evaluated and ultimately selected in the NPRM is the ''Weighted-Ratio Option.'' This option distinguishes among the categories to establish a reasonable fee for each category. To determine the fee, a weighted ratio is assigned based on

[24] ''Review of the Drug Enforcement Administration's Use of the Diversion Control Fee Account,'' I–2008–002, February 2008, *www.usdoj.gov/oig/reports/DEA/e0802/final.pdf.*

registrant group, and the amount needed to be collected over the FY 2012–FY 2014 period to cover the costs of the DCP is divided by the weighted number of estimated registrations.

Historically, costs vary and a fee must be set in advance. Since the inception of registration fees, even before DEA was required to recover the full costs of the DCP, DEA has utilized a weighted method of fee allocation. On April 24, 1971, DEA's precursor agency, the Bureau of Narcotics and Dangerous Drugs, published regulations implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970. Those regulations required registration/reregistration fees in the following amounts: $50 for manufacturers; $25 for distributors; and $5 for dispensers and persons conducting research, instructional activities, or chemical analysis. In 1983, DEA published a NPRM which indicated that a 1982 GAO report found that DEA's previous fees did not adequately recover the costs incurred by the Government. The GAO recommended that DEA set a fee schedule of $250 for manufacturers, $125 for distributors, and $25 for practitioners. DEA, however, ultimately set the fee based on its own estimates as follows: $250 for manufacturers; $125 for distributors, importers, and exporters; and $20 for dispensers and persons conducting research, instructional activities, or chemical analysis. DEA indicated that these estimates were based on ''an increase in the number of practitioner registrants since 1980 * * *.'' 48 FR 14640.

The first known published discussion which attempted to capture the specific ratio of fees occurred in the Final Rule; Remanded for Further Notice and Comment, published by DEA in 1996. That Final Rule augmented DEA's first fee-setting rule initiated to recover the full costs of the DCP as defined by Congress. It was published in response to a decision by the United States Court of Appeals which required DEA to identify the components of the DCP and provide a brief explanation of why DEA deemed each component to be part of the program. In that Final Rule, DEA stated that the ratio of fees implemented with the CSA in 1971 was as follows: ''A distributor's fee is 50% of the manufacturer's fee and a dispenser's fee is 16–20% of the distributor's fee. The fee ratios have remained consistent [since 1971] and have not been the subject of any substantive comment or objection by the regulated industry.'' 61 FR 68632. A variation of this ratio has been applied in each fee structure since the implementation of the fee system, usually as expressed above.

The fee structure established by this rule is based on the same ratios that have been utilized since the first amendment to the fee structure, as follows: 1 for researchers, canine handlers, analytical labs, and narcotic treatment programs, who are on a one-year registration cycle; 3 for registrants on three-year registration cycles such as pharmacies, hospitals/clinics, practitioners, teaching institutions, and mid-level practitioners; 6.25 for distributors and importers/exporters; and 12.5 for manufacturers. The ratio of 1 represents a base annual fee by which each ratio is multiplied to determine the total fee per cycle, i.e., one year or three years.

The weighted-ratio methodology, much like the flat fee methodology, is straightforward and easy to understand. Unlike the flat fee, however, this method applies historic weighted ratios to differentiate fees among registrant groups. The fees calculated using this methodology are similar to fees calculated in the past-based option, which allocates three years of historical pre-registration and scheduled investigation costs to registrant groups. This method, however, does not create a disproportionate fee increase in any registrant group. The proposed fee published in the NPRM was calculated using this methodology and resulted in an increase of approximately 33 percent for all registrant groups.

DEA is finalizing the fee schedule using the weighted-ratio methodology as proposed. This approach has been used since Congress established registrant fees and continues to be a reasonable reflection of differing costs. The registration fees under the weighted-ratio option result in differentiated fees among registrant groups, where registrants with higher revenues and costs pay higher fees than registrants with lower revenues and costs. Furthermore, the weighted-ratio avoids the disparity that resulted from the past-based methodology. The weighted ratios used by DEA to calculate the fees have proven effective and reasonable over time. Additionally, the selected calculation methodology accurately reflects the differences in registration and other DCP activities by registrant category. For example, these costs are greater for manufacturers. The weighted-ratio methodology results in reasonable fees for all registrant groups at a level sufficient to ensure the recovery of the full costs of operating the DCP.

Discussion of Comments

DEA received 195 comments on the NPRM published on July 6, 2011, at 76 FR 39318. Of these comments, 121 were from mid-level practitioners (e.g. nurse practitioners, nurse mid-wives, nurse anesthetists, clinical nurse specialist, and physician assistants), 4 were from practitioners, 9 were from associations or corporations and 61 commenters did not identify their registration category.

Comments: The majority of commenters opposed the fee increase on principle or as coming at a bad time due to the economic climate. Some commenters believed it was a tax on practitioners and other registrants.

DEA Response: DEA outlined the legal authority, the history of the fees, the need for an increase in fees, the methodology, and the proposed fee calculation in the NPRM in an attempt to make it transparent why there is a fee, why there is a periodic recalculation, and how the proposed new fee schedule was calculated. Rather than a ''tax,'' the registration fee is a statutory requirement for those seeking to participate in the closed system of distribution by handling, or having access to, controlled substances or List I chemicals. The fee funds the DCP under the Controlled Substances Act which includes providing and maintaining services to DEA registrants.

One commenter suggested DEA postpone a fee increase until the economy improves and several suggested imposing incremental increases over a period of time. DEA is sensitive to the economic challenges facing many registrants and has endeavored to set the fee as low as possible consistent with its statutory mandates. DEA continually strives to be fiscally responsible. The last fee increase was set in FY 2006 and was designed to encompass only FYs 2006–2008. Through various efforts and cost-saving measures, the DCP has been able to operate under that fee structure through FY 2011. However, DEA cannot further postpone any increase because without an adjustment in the annual registration fees, the DCP will be unable to continue current operations and will be in violation of the statutory mandate that fees charged ''shall be set at a level that ensures the recovery of the full costs of operating the various aspects of [the diversion control program.]'' 21 U.S.C. 886a(1)(C). For example, collections under the current fee schedule would require the DCP to significantly cut existing and planned DCP operations vital to its mission. DEA relies on the DCP to maintain the integrity of the closed system of

distribution, particularly at this time of increased abuse and diversion outlined in the proposed rule.

It is not feasible for DEA to implement an incremental increase while ensuring the recovery of the full costs of operating the various aspects of the DCP, as required by the CSA, and such an increase would not be fair or equitable to registrants. Under the current fee structure, the vast majority of registrants renew their registration once every three years. If DEA were to implement an incremental increase within the three-year cycle, registrants who must renew their registration in the third year of that cycle would pay a substantially higher amount than those registrants who must renew in the first year of the cycle. Additionally, DEA must have reliable collection estimates for budget formulation and execution activities throughout the three-year collection cycle.

Comments: A number of comments suggested that the calculation recognize that other non-federal licensure and registration fees are also increasing.

DEA Response: DEA recognizes there may be other fee increases by states. However, the CSA requires that DEA fees be based on the full costs of operating the various aspects of the DCP.

Comments: Mid-level practitioners expressed the belief that any fee increase is unfair to certain types of registrants, such as mid-level practitioners, who make less money than other types of practitioners.

DEA Response: The fees are on a graduated scale based on the three categories of registration established by statute. Under current authority, DEA has not created additional fee categories or differentiated within a fee category. As discussed, the fees are based on DCP program costs and individual practitioners, regardless of professional occupation, require similar DCP expenditures related to registration and oversight. Furthermore, as outlined in the economic analysis using estimated 2012 average income based on 2004–2009 data provided by the Bureau of Labor Statistics, the fee as a percentage of average income for physicians and dentists is 0.1% and it is 0.26% for physician assistants. These percentages are essentially the same as in 2006, the year of the previous fee adjustment, where the fee as a percentage of average income was 0.1% for physicians and dentists and 0.25% for physician assistants.

Comments: One comment suggested that the length of registration should be extended at the same time there is an increase in the fee.

DEA Response: The statute clearly sets forth the period of registration:

> ''Every person who manufactures or distributes any controlled substance or list I chemical, or who proposes to engage in the manufacture or distribution of any controlled substance or list I chemical, shall obtain *annually* a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.'' 21 U.S.C. 822(a)(1) (emphasis added).
>
> ''*Every person who dispenses,* or who proposes to dispense, any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him. The Attorney General shall, by regulation, determine the period of such registrations. *In no event, however, shall such registrations be issued for less than one year nor for more than three years.* 21 U.S.C. 822(a)(2) (emphasis added).

DEA currently allows for the maximum three-year registrations for dispensers of controlled substances, except certain practitioners who dispense narcotic drugs for narcotic treatment, who are statutorily required to obtain annual registrations. 21 U.S.C. 823(g)(1).

Comments: Some commenters indicated that DEA should not raise registration fees but instead decrease its spending, be more efficient with the fees it currently collects or find another source of funds. One commenter questioned whether increased funding would improve the effectiveness of the DCP.

DEA Response: By statute, DEA cannot use another source of funds for the DCP. By enacting 21 U.S.C. 886a, Congress mandated that the DCP be fully funded through the collection of fees rather than appropriated funds. The CSA specifically states that ''[f]ees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.'' 21 U.S.C. 886a(1)(C).

It has been more than five years since the last fee adjustment. DEA last adjusted the fee schedule in August 2006, and that fee schedule was intended to be sufficient to cover the ''full costs'' of the DCP for FY 2006 through FY 2008. The DCP has continued to operate under this fee schedule due to cost savings through reorganization, modernization efforts, and by delays in execution of planned programs. As indicated by the above-referenced 2008 OIG report, additional salary and other costs attributable to diversion control activities needed to be incorporated into the DCP as was done in this fee calculation. In addition, Congress has expanded the scope of the DCP through budgetary and legislative action in order to address an increase in the diversion of controlled substances and listed chemicals that seriously impact public health and safety.

DEA has been and will continue to be fiscally responsible and will remain vigilant towards identifying methods to improve efficiencies or identifying other cost saving measures. As discussed, the DCP has been evaluated by the OIG and it did not find that DCFA funds were misused. As noted earlier, the OIG found that DEA did not fully fund all diversion control costs with the DCFA as required.[25] The DCP plans to continue cost-saving technology improvements in doing business and to implement such improvements for those that do business with the DCP through its regulatory functions such as registration and reporting systems.

The DCP exercises a variety of management controls, including independent review of certain DCFA expenditures. This is accomplished by the Validation Unit which was established in 2003 to review DCFA expenditures of $500 or more to ensure that each expense is in support of diversion-related activities. DEA continues to evaluate the appropriate mix of management controls. The costs to the DCP associated with additional review of expenditures must be balanced against the risks of error. DEA may adjust the expenditure threshold level for review and validation up to $2,500 to adjust the review process and reduce the associated costs to the DCP. The DCP will continue to provide managerial oversight on expenditures involving DCFA funds to include oversight by agency managers and by the Validation Unit.

The DCP is expanding its use of Tactical Diversion Squads and is conducting more investigations, inspections, and scheduling actions now than ever before due to the increase in prescription drug abuse and the corresponding efforts to divert such substances to illicit use. Similarly, an ever expanding number of synthetic substances, such as synthetic cannabinoids (a large family of chemically unrelated structures functionally similar to [Delta]9-tetrahydrocannabinol (THC), the active principle of marijuana) and synthetic cathinones (drugs of the phenethylamine class which are structurally and pharmacologically similar to amphetamine and other

[25] ''Review of the Drug Enforcement Administration's Use of the Diversion Control Fee Account,'' I–2008–002, February 2008, *www.usdoj.gov/oig/reports/DEA/e0802/final.pdf.*

related substances, and are commonly falsely marketed as bath salts or plant food) require the DCP to dedicate resources to analyze and respond to new and emerging threats more often now than at any time in the past to protect the public health and safety.

The DCP also establishes and maintains various IT systems for use by registrants. These systems result in cost savings and help both DEA and the registrants perform day-to-day functions more efficiently.

Comments: One commenter felt DEA appropriations and not DCP funds should be used to pursue illicit entities operating via the internet and ''pill mills'' since they are the major sources of controlled substance abuse and diversion.

DEA Response: DEA must set fees at a level that ensures the recovery of the full costs of operating the various aspects of the DCP. 21 U.S.C. 886a(1)(C). As discussed above under the History of Fees, the fees are for the ''registration and control'' of the manufacture, distribution, and dispensing as well as importing and exporting of controlled substances and listed chemicals. 21 U.S.C. 821 and 958(f). The ''control'' of controlled substances and listed chemicals includes enforcement costs where the DCP carries out the mandates of the Controlled Substances Act. In doing so, the DCP may investigate the diversion of controlled substances regardless of the method or source of diversion, including illicit operations involving the internet and ''pill mills.''

Comments: Several commenters requested more specificity on what the fee increase will support.

DEA Response: A supplemental document titled the Proposed Fee Calculation, located with the NPRM on *www.regulations.gov,* and an updated version of this document titled New Registrant Fee Schedule Calculations, posted with this final rule, also on *www.regulations.gov,* outline specific costs of the DCP used in calculating the fee. As discussed in the NPRM and above, the DCP is defined as ''the controlled substance and chemical diversion control activities of the Drug Enforcement Administration.'' 21 U.S.C. 886a(2)(A). The term ''controlled substance and chemical diversion control activities'' is defined as ''those activities related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.'' 21 U.S.C. 886a(2)(B). Additionally, detailed program costs may be found in the annual President's Budget, as well as supporting budget documents released on the Department of Justice's Web site at *http://www.justice.gov/about/bpp.htm*. See in particular pages 97–101 of the FY 2012 DEA budget.

Comments: One registrant recommended that DCP funds be better used to provide for adequate staffing for the DCP functions involving quota requests, scheduling determinations, and policy and regulatory interpretations in order to be more responsive to the regulated community.

DEA Response: DEA continuously monitors and adjusts the number of employees assigned to various DCP tasks, including those that respond to inquiries from the registrant community. The DCP maintains a robust public Web site that is continually updated with information on topics of interest to registrants such as administrative final orders, significant guidance documents, ''questions and answers'' on common topics, registration tools and resources, and registrant reporting requirements. The Web site is intended to alleviate the burden of responding to multiple inquiries regarding similar or common topics, and to communicate new policies and/or views to registrants. The DCP regulates a registrant population of approximately 1.4 million that continues to grow every year, and each written inquiry requires a thorough review of the pertinent facts in order to provide a fair, measured response. While awaiting a response from the DCP, registrants are encouraged to review the DCP Web site for information and guidance, and to seek assistance from their local DEA offices and state licensing bodies. The DCP also organizes regional conferences designed to provide information and resources to registrants. Finally, all quota requests are scrutinized in detail and the supplemental information provided by quota applicants is verified and cross-checked in order to ensure the DCP is fulfilling all of its statutory obligations. The volume of quota applications and the level of review required for an appropriate assessment is time consuming. Accordingly, DEA is undertaking a comprehensive review of its quota regulations pursuant to Executive Order 13563 with the goal of updating and streamlining the quota application process.

Comments: Several comments stated that any fee increase is unfair to persons who do not prescribe controlled substances but are required by an employer or an insurance company to maintain a DEA registration. Similarly, some allege that many registrants are not reimbursed for their payment of the registration fee by their employer or that fewer reimbursements occur than in the past.

DEA Response: DEA issues registrations to practitioners for the purpose of prescribing or dispensing controlled substances. DEA does not control or otherwise have authority over requirements by outside entities such as insurance companies or employers. Furthermore, DEA expends resources to review applications to determine qualifications, and it expends resources to maintain registrations once they are issued. As such, DEA cannot consider the underlying reasons registrants apply for a registration, other than those related to the handling of controlled substances, nor can DEA consider whether a particular registrant is reimbursed for the fee.

Comments: Other comments stated that any fee increase is detrimental to persons with registrations in multiple states. Another commenter suggested that a DEA number should be assigned to a provider throughout their career, regardless of their practice location.

DEA Response: By statute, ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances or List I chemicals.'' 21 U.S.C. 822(e). Thus, some registrants, based upon their particular circumstances and business decisions, may have more than one registration within the same state or in multiple states where more than one state has authorized the registrant to conduct the above described activities. Registration is an essential component of the closed system of distribution established under the CSA and is predicated on compliance with all applicable state and local laws, including state licensure in each state the registrant practices.

Comments: A number of commenters focused on situations where one person may be more impacted by the fee increase than another, such as persons working in low-income areas where there is little or no reimbursement for registration fees, persons working in rural areas, and persons in sole practice or in small practices. Several commenters expressed concern that fee increases will affect patient care as some registrants may not renew or seek to register because of the cost.

DEA Response: DEA may only operate within its statutory authority, which requires that the fees be set at a level that ensures the recovery of the full costs of operating the DCP. DEA notes that there are currently 1.4 million active registrants and, as such, even if business model or size of practice could

be objectively measured and accounted for in individualized fee calculations, such individual calculations would be costly. It is likely that any cost savings would be offset by the increased need for personnel to perform the individual fee calculations. It should also be noted that historically, DCP costs are higher for rural areas because of the additional travel costs from DEA office locations. Each applicant for registration must evaluate their need to be able to handle controlled substances or listed chemicals.

Comments: One commenter suggested that those state, federal, and tribal organizations that are exempt from payment of the fee should be required to pay a fee before the current fee is increased.

DEA Response: Registration fee exemptions are set forth in the existing regulations. Generally, hospitals and other institutions operated by an agency of the United States or of any state or any political subdivision or agency thereof, as well as any individual required to obtain a registration in order to carry out his or her duties as an official of an agency of the United States or of any state or any political subdivision or agency thereof may be exempt from payment of a registration or reregistration fee. 21 CFR 1301.21. Such an individual is not exempt if his/her registration is used for appropriate private activities unrelated to the performance of his/her official duties. Tribal governments are also exempt pursuant to the Indian Health Care Improvement Act of 2010.[26] DEA is committed to carefully reviewing all applications for fee exempt status to ascertain that such exemptions are not inappropriately granted. Approximately 96,000 individual and institutional registrants, or 7% of all registrants, are exempt from registration fees.

Comments: Some commenters suggested that persons who over-prescribe or violate the law should be charged additional fees and penalties to help make up any shortfall in collections. Likewise, it was suggested that the end users of controlled substances be charged an additional fee. Others suggested that DEA legalize ''agriculture-based controlled substance production'' to either decrease costs or charge a fee to fund the DCP.

DEA Response: DEA has no authority to implement these suggestions. DEA's statutory authority is to charge reasonable registration fees set at a level that ensures the recovery of the full costs of operating the various aspects of the DCP. In addition, the CSA provides for mechanisms independent of the registration fee by which to exact financial remuneration from registrants who violate the law. Registrants who violate the law with regard to controlled substances may be subject to civil and criminal penalties, as well as forfeitures. 21 U.S.C. 841, 842, 843, 881.

Comments: Some commenters suggested that the fee should be based on the rate of prescribing of controlled substances or pro-rated to the salary of the prescriber or based on the registrant's number of Medicaid and Medicare patients.

DEA Response: DEA does not have access to the controlled substance prescribing rates of practitioners. In fact, many states with prescription drug monitoring programs prohibit law enforcement entities from using prescribing data without specific, independent legal authority to do so, e.g., a subpoena or warrant. Even so, DEA does not have the expertise or resources to calculate the rate of prescribing for each registrant in order to personalize each registrant's registration fee. Additionally, allowing individualized calculations based on prescribing rates, income, or type of patients served would introduce uncertainty and unpredictable fluctuations in the collection cycle, thereby jeopardizing the statutory mandate to recover the full costs of operating the DCP.

Comment: One association felt DEA fails to recognize the unfairness of the ''Weighted-Ratio'' methodology for fee calculation because dispensers or practitioners make no income from writing a prescription whereas manufacturers and distributors more directly benefit from their authorization by registration to handle controlled substances. This commenter believed the difference in annual revenue or income for a practitioner compared to a manufacturer or distributor was more than the 9 times ratio for distributors and the 12 times ratio for manufacturers.

DEA Response: It is important to emphasize that the focus of DEA's fee calculation methodology is to account for DCP program costs among the registrant categories and not to set fees according to a percentage of registrant revenue from use of a DEA registration. DEA provided an analysis of incomes to show the economic impact of the relatively minor proportion of that income that may be expended for payment of a registration fee. Additionally, the analysis showed that the fees as percentages of income/revenue are essentially the same as in 2006, the year of the last fee adjustment.

Need for New Fee Calculation

As discussed in the NPRM, DEA last adjusted the fee schedule in August 2006. This fee schedule was calculated to cover the ''full costs'' of the DCP for FY 2006 through FY 2008 or October 1, 2005 through September 30, 2008. However, collections did not begin until FY 2007.[27] The DCP program has continued to operate under this fee schedule due to cost savings through reorganization and modernization efforts and by inadvertently excluding certain costs from the DCP. As indicated by the above-referenced 2008 OIG report, additional salary and other costs attributable to diversion control activities need to be incorporated into the DCP. In addition, the scope of the DCP has been expanded by Congress and by the need to address the diversion of controlled substances and listed chemicals that seriously impact public health and safety.

The Office of Diversion Control at DEA is focused on the supply side of this serious threat to the public health and safety. At the end of FY 2008, a reorganization within DEA expanded the use of Tactical Diversion Squads across the country to allow Diversion Investigators to focus their expertise on regulatory oversight, thereby increasing the deterrent effect of increased regulatory investigations. Tactical Diversion Squads incorporate the criminal investigative skills and statutory authority of Special Agents as well as state and local Task Force Officers in an effort to stop those organizations and individuals who violate the CSA by diverting controlled substances and listed chemicals into the illicit market. Diversion Investigators are a key asset as they lend their keen knowledge of the closed system of distribution to the Tactical Diversion Squads. Diversion Investigators' familiarity and detailed understanding of the closed system of distribution require, however, that they continue to lead the regulatory oversight of DEA registrants. DCP costs increase with the need to expand the number and use of Tactical Diversion Squads.

Due to the rise in controlled substance diversion and abuse, as well as the recent emergence of designer drug abuse, the DCP has increased scheduled

[26] In accordance with 25 U.S.C. 1616q, employees of a tribal health or urban Indian organization are exempt from ''payment of licensing, registration, and any other fees imposed by a Federal agency to the same extent that officers of the commissioned corps of the Public Health Service and other employees of the Service are exempt from those fees.''

[27] 71 FR 51105 (August 29, 2006).

investigations of registrants and drug scheduling initiatives, as well as other modifications in its diversion control efforts. The DCP continues to draw technical expertise from Diversion Investigators, and the DCP has incorporated greater numbers of Special Agents, Chemists, Information Technology Specialists, Attorneys, Intelligence Research Specialists, and state and local personnel. It is essential to utilize a diverse skilled workforce and constantly review and modify all aspects of the DCP to help successfully execute the drug trafficking disruption goals of the National Drug Control Strategy and effectively prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of these substances for legitimate medical, scientific, research, and industrial purposes.

DEA has been and will continue to be fiscally responsible and will remain vigilant in identifying methods to improve efficiencies or identifying other cost saving measures. As discussed above, however, a new fee calculation is needed. Without an adjustment in the annual registration fees, DEA will be unable to continue current operations and will be in violation of the statutory mandate that fees charged ''shall be set at a level that ensures the recovery of the full costs of operating the various aspects of [the diversion control program].'' 21 U.S.C. 886a(1)(C). For example, in FY 2009, the DCP's regulatory activities included more outreach programs to help the registrant population better comply with the CSA. The DCP increased investigation cycles as well as depth of review. In FY 2009, there were 1,065 scheduled investigations; in FY 2012, DEA projected performance targets of 3,906 scheduled investigations—an increase of 2,841. Additionally, DEA coordinates National Prescription Drug Take-Back Day initiatives, providing an opportunity for the safe disposal of unwanted or unused prescription drugs. DEA also projects to increase the number of Diversion Priority Target Organizations not Linked to Consolidated Priority Organization Targets Disrupted or Dismantled to 85 (disrupted)/90 (dismantled), an increase of 32 (disrupted)/66 (dismantled) over FY 2007's 53 (disrupted)/24 (dismantled), and is authorized and plans to establish an additional 12 Tactical Diversion Squads, which conduct criminal enforcement activities, across the United States. The new fee schedule will allow DEA to sustain current, planned, and future operations and employ additional personnel in support of important program initiatives during Fiscal Years 2012–2014.

Fee Calculation

DEA must ensure the recovery of the full costs of operating the DCP while charging registrants reasonable fees relating to the registration and control of the manufacture, distribution, import, and export of controlled substances and listed chemicals, as well as the dispensing of controlled substances. For the DCP to have funds to function, DEA must determine, in advance of actual expenditures, a reasonable fee to be charged. As a result, historical data and projections must be used to project the annual costs of the DCP. Additionally, a reasonable fee must be calculated that will fully recover the costs of the DCP based on the variability over time of the number of registrants in the different categories of registration. The fees collected must be available to fully fund the DCFA and to reimburse DEA for expenses incurred in the operation of the DCP (21 U.S.C. 886a); therefore, there must always be more collected than is actually spent to avoid running a deficit in violation of federal fiscal law.[28] In operating the DCP, DEA must be prepared for changes in investigative priorities, diversion trends, and emerging drugs and chemicals posing new threats to the public health and safety.

Current options to calculate fees are also limited by the ability and practicability of tracking and allocating detailed costs, although the agency continues to improve its capabilities on this front. Part of the difficulty stems from the fact that the mission of DEA involves investigations and actions that often involve poly-drug organizations (drug trafficking organizations that traffic multiple drugs), various types of registrants, or investigations that may start out as one type of investigation and result in another, based upon the way the facts develop. It is apparent that Congress recognized that the costs of the registration and control of controlled substances and listed chemicals are not properly attributed on a per registrant basis when Congress differentiated among the categories of registrants for purposes of calculating a reasonable fee, i.e., manufacturers, distributors, importers, exporters, and dispensers. The weighted ratio of 12.5 for manufacturers, 6.25 for distributors (including importers and exporters), and 1 for dispensers is consistent with Congress's differentiation between the categories of registrants.

Because of the complexity of many diversion investigations, tracking costs within the DCP according to registrant categories or within a given registrant category has not been possible or cost-efficient. Such detailed cost attribution may or may not be feasible in the future. DEA is in the process of testing a system where personnel would account for their daily hours according to whether their time is spent on DCP or other DEA mission activities. DEA has also made progress through reorganization and there is recognition throughout the agency of the need to identify and separate DCP costs from other agency costs.

Thus, the fee is calculated by assigning registrants to a business activity or category (*e.g.,* researcher, practitioner, distributor, manufacturer) based on the statutory fee categories. Then a base fee rate is established according to the annual estimated costs of the DCP. A projected population is calculated for each business activity or category. That figure is then multiplied by a ratio of 1.0 for researchers, 3.0 for practitioners (for administrative convenience the fee is collected every three years for practitioners), 6.25 for distributors, and 12.5 for manufacturers. By utilizing these different ratios, the agency recognizes the statutory need to charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals. Historically, registration and other DCP activities are greatest for manufacturers. This is because there is great risk and grave consequences associated with the quantity and purity of controlled substances and/or chemicals with each manufacturer at this point in the closed system. All of the individual business activity figures are then added together to form a weighted sum for one projected year. This process is performed for two more years using future projected registrant populations for those years multiplied by the ratio. The annual figures for these three years are then added together and divided into the total budget requirements for that three-year period to arrive at the base rate fee to be charged to each category of registrant.

In calculating fees to recover the full costs of operating the DCP, DEA estimates the costs of operating the DCP

[28] In general, no officer or employee of the United States Government may make or authorize an expenditure or obligation in excess of an amount available in an appropriation or fund. 31 U.S.C. 1341.

for the next three fiscal years.[29] To develop the DCFA budget estimates for Fiscal Year (FY) 2012, FY 2013 and FY 2014, DEA compiles: (1) The actual DCFA financial data for FY 2011; (2) the FY 2012 President's Budget Request; (3) the estimated budgets for FY 2013 and FY 2014; and (4) the required annual $15 million transfer to the United States Treasury as mandated by the CSA (21 U.S.C. 886a). The following paragraphs explain the annual revenue calculations and how the total amount to be collected for the FY 2012–2014 period was calculated. In developing this figure, DEA begins with annual projected DCP obligations, including payroll, operational expenses and necessary equipment. The DCP budget has increased due to inflationary adjustments for rent and payroll and to increase staffing resources that support the regulatory and law enforcement activities of the program. These additional costs have not been reflected in the fees until now because the fees were last adjusted for the time period of FY 2006–2008. Specific details on the DCP budget are available in the annual President's Budget Submission and supplemental budget justification documents provided to Congress.[30]

Total obligations for the DCP have increased from FY 2007 to FY 2010 by approximately 49 percent. For the FY 2006–2008 period, payroll expenses (staff compensation and benefits) composed the largest component of DCP costs at 55.7 to 57.6 percent per year. Between the period of FY 2006 and FY 2010, payroll constituted an average of 56.7 percent of DCP expenses. Operating expenses and capital expenditures made up the remainder of DCP costs. Operating expenses (an average of 39.3 percent for the FY 2006–2010 period) include daily operation costs such as investigative costs, travel, and purchases of goods and services. Capital expenditures, including equipment and furniture purchases, capital leases, and land/structure improvements and purchases, averaged 4.0 percent during this same period.

For the FY 2012–2014 period covered by this rulemaking, the overall breakdown of DCP major cost categories does not depart significantly from previous years in terms of *percentage* of costs; however, totals for each of these major cost categories do increase to reflect additional costs in each of these categories.

In addition to the budget estimates for each of the fiscal years, the cost components outlined below are also considered in determining required registration fee collections.

Recoveries From Money Not Spent as Planned (Deobligation of Prior Year Obligations)

At times, DEA enters into an obligation to purchase a product or service that is not delivered immediately, such as in a multi-year contract. Changes in obligations can occur for a variety of reasons, *e.g.,* changes in planned operations, delays in staffing, implementation of cost savings, changes in vendor capabilities, etc. When DEA does not expend its obligation, the ''deobligated'' funds are ''recovered'' and the funds become available for DCP use. Based on historical trends and for purposes of calculating the fee levels, the recovery from deobligation of prior year obligations is estimated at $13.5 million per year.

Transfer to Treasury

As discussed, in 1993, Congress determined that the DCP would be fully funded by registration fees rather than by appropriations.[31] Congress established the DCFA as a separate account of the Treasury to ''[ensure] the recovery of the full costs of operating the various aspects of [the diversion control program]'' from fees charged by DEA. 21 U.S.C. 886a(1)(C). Collected fees are deposited into the DCFA. Each fiscal year, the first $15 million is transferred to the Treasury and is not available for use by the DCP. Therefore, DEA needs to collect an additional $15 million per year beyond estimated costs for transfer to the Treasury.

Operational Continuity Fund (OCF)

DEA maintains an operational continuity fund (OCF) based on the need to maintain DCP operations when monthly collections and obligations fluctuate. Historically, current obligations sometimes exceed current collections consecutively for several months. Therefore, an operational continuity fund is maintained in order to avoid operational disruptions due to these fluctuations and monthly differences in collections and obligations. Using statistical analysis of the historical fluctuations between amounts collected and amounts obligated, DEA has determined that seven percent of the projected obligations is adequate to avoid operational disruptions. The amount required to bring the operational continuity fund balance to the $15 million plus seven percent level is added to projected costs.

The FY 2012–FY 2014 OCF balance projections have been changed from those shown in the NPRM to reflect actual FY 2011 financial data. The FY 2012 beginning OCF balance of $41,726,554 is higher than the FY 2014 end of year target OCF balance of $40,943,670 by $782,884. The higher beginning OCF balance allows lower required collections from registration fees. The incremental changes in OCF balance for FY 2012, FY 2013, and FY 2014 are −$2,047,144, $863,240, and $401,020 respectively (or a cumulative decrease of $782,884). The cumulative decrease of $782,884 is a change from the cumulative increase of $8,320,115 estimated in the NPRM. The two main factors that contributed to the change from the NPRM calculation estimated in early 2011 to the final rule calculation performed after the end of FY 2011 (September 30, 2011) are: (1) Lower than estimated actual FY 2011 spending which led to a higher beginning FY 2012 OCF balance; and (2) lower estimated budgets for FY 2013 and FY 2014, which lowered the target OCF balance.

TABLE 1—CHANGE IN OPERATIONAL CONTINUITY FUND BALANCE FY 2012–2014

	FY2012	FY2013	FY2014
Budget	$322,000,000	$352,563,000	$364,895,000
Target OCF ($15M + 7%)	39,679,410	40,542,650	40,943,670
Beginning OCF balance	41,726,554	.....	.....

[29] See ''New Registrant Fee Schedule Calculations'' in this rulemaking docket found at www.regulations.gov.

[30] See ''U.S. Department of Justice, Drug Enforcement Administration, FY 2012 Performance Budget Congressional Submission'' for details on the FY 2012 budget. The budget document is available online at *http://www.justice.gov/jmd/2012justification/pdf/fy12-dea-justification.pdf.*

[31] Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Public Law 102–395, codified in relevant part at 21 U.S.C. 886a.

TABLE 1—CHANGE IN OPERATIONAL CONTINUITY FUND BALANCE FY 2012–2014—Continued

	FY2012	FY2013	FY2014
Needed Change to Achieve Target OCF	(2,047,144)	863,240	401,020
3-year cumulative change			(782,884)

Combat Methamphetamine Act of 2005 (CMEA) Collections

Under the CMEA, DEA collects a self-certification fee for regulated sellers of scheduled listed chemical products, which is included as part of the total collections. The fee is waived for any person in good standing and holding a current DEA registration to dispense controlled substances, such as a pharmacy. DEA has observed an approximately 26 percent decline in self-certifications from FY 2008 to FY 2011 and anticipates that the decline will stabilize at approximately 5,000 per year from FY 2012 to FY 2014. The self-certification fee is $21. CMEA self-certification fee collection estimates for FY 2012, FY 2013, and FY 2014 for purposes of calculating the fee levels are $105,000 annually.

TABLE 2—CMEA COLLECTIONS FY 2012–2014

	FY2012	FY2013	FY2014
Number of paying self-cert	5,000	5,000	5,000
Fee	$21	$21	$21
CMEA collection estimate	$105,000	$105,000	$105,000

Other Collections

DEA also derives revenue from the sale/salvage of official government vehicles dedicated to DCP use. DEA's estimate for all other collections is $533,766 per year. This is the actual amount for FY 2011.

Estimated Total Required Collections

Based on these figures, DEA calculated the total amount required to be collected for the FY 2012–2014 period for purposes of calculating the fee levels as follows:

Required registration fee collections for FY 2012 are $320,814,090. This figure includes the budget of $322,000,000, plus $15 million for transfer to the Treasury, minus $13.5 million in recoveries, $2,047,144 for the decrease in the OCF balance, $105,000 in CMEA self-certification collections, and $533,766 in other collections.

Required registration fee collections for FY 2013 are $354,287,474. This figure includes the estimated budget of $352,563,000, plus $15 million for transfer to the Treasury and $863,240 for the increase in the OCF balance, minus $13.5 million in recoveries, $105,000 in CMEA self-certification collections, and $533,766 in other collections.

Required registration fee collections for FY 2014 are $366,157,254. This figure includes the estimated budget of $364,895,000, plus $15 million for transfer to the Treasury and $401,020 for the increase in the OCF balance, minus $13.5 million in recoveries, $105,000 in CMEA self-certification collections, and $533,766 in other collections.

TABLE 3—NEEDED FEE COLLECTIONS FY 2012–2014

	FY2012	FY2013	FY2014	3-yr total
Budget/Estimated Budget	$322,000,000	$352,563,000	$364,895,000	$1,039,458,000
Recoveries	(13,500,000)	(13,500,000)	(13,500,000)	(40,500,000)
Net Budget	308,500,000	339,063,000	351,395,000	998,958,000
Transfer to the Treasury	15,000,000	15,000,000	15,000,000	45,000,000
Change to Achieve Target OCF	(2,047,144)	863,240	401,020	(782,884)
CMEA Self-cert collections	(105,000)	(105,000)	(105,000)	(315,000)
Other collections	(533,766)	(533,766)	(533,766)	(1,601,297)
Required collections from Registration Fees	320,814,090	354,287,474	366,157,254	1,041,258,818

Numbers are rounded.

In total, DEA needs to collect $1,041,258,818 in registration fees over the three year period, FY 2012–FY 2014, to fully fund the DCP.

As in the past, DEA is calculating the fee for each registrant category for a three-year period (FY 2012–2014). The vast majority of registrants are practitioners who pay a three-year registration fee. These registrants are divided into three separate groups who pay their three-year registration fees on alternate year cycles. Because registration cycles may differ from year to year, the total amount collected through fees in a given year may not exactly match the projected amount. For purposes of calculating the new fee schedule, DEA used a new fee collection start date of March 1, 2012, and used the current fee schedule for calculating the first five months of FY 2012 registration fee collections.

In calculating the new fees through FY 2014 using the selected weighted-ratio methodology, DEA has updated the data used in the calculation set forth in the proposed rule. Instead of budget estimates for FY 2012, 2013, and 2014, the final fee calculation uses the actual FY 2012 budget, revised budget estimates for FY 2013 and FY 2014, and revised estimates for recoveries from deobligations and for the Operational Continuity Fund. These revisions are

outlined in the overview of the Diversion Control Fee Account below:

	FY2012	FY2013	FY2014
Congressional Budget/Cost Estimates	$322,000,000	$352,563,000	$364,895,000
Operational Continuity Fund (OCF) Brought Forward From Prior Year	41,726,554	39,701,112	36,496,165
Collections: Registration Fees	320,835,793	350,219,287	369,879,300
Collections: CMEA	105,000	105,000	105,000
Treasury	(15,000,000)	(15,000,000)	(15,000,000)
Net Collections	305,940,793	335,324,287	354,984,300
Recoveries from Deobligations	13,500,000	13,500,000	13,500,000
Other Collections	533,766	533,766	533,766
Subtotal Availability	361,701,112	389,059,165	405,514,231
Obligations	322,000,000	352,563,000	364,895,000
EOY OCF Balance	39,701,112	36,496,165	40,619,231
Target OCF ($15M+7% of Budget)	39,679,410	40,542,650	40,943,670

Numbers are rounded.

Note: Due to rounding of the fees to the whole dollar, the total 3-year registration fee collection estimate of $1,040,934,380 does not equal the target collection amount of $1,041,258,818 used to calculate the fees.

Based upon careful consideration of all of the comments and applying the above, a new fee schedule is set forth below. This new fee schedule is *slightly less* than the fee schedule proposed in the NPRM on July 6, 2011, due to the completion of FY 2011 and the availability of actual financial data for the fiscal year as well as progression in the budget process due to the passage of time since the NPRM was prepared.

REGISTRANTS ON THREE-YEAR REGISTRATION CYCLE

Registrant class/business	Fee
Pharmacy	$731
Hospital/Clinic	731
Practitioner	731
Teaching Institution	731
Mid-Level Practitioner	731

* Pharmacies, hospitals/clinics, practitioners, teaching institutions, and mid-level practitioners currently pay a fee for a three-year period. Fee of $731 is equivalent to approximately $244 annually.

REGISTRANTS ON ANNUAL REGISTRATION CYCLE

Registrants class/business	Fee
Researcher/Canine Handler	$244
Analytical Lab	244
Maintenance	244
Detoxification	244
Maintenance and Detoxification	244
Compounder/Maintenance	244
Compounder/Detoxification	244
Compounder/Maintenance/Detoxification	244
Distributor (chemical and controlled substances)	1,523
Reverse distributor	1,523
Importer (chemical and controlled substances)	1,523
Exporter (chemical and controlled substances)	1,523
Manufacturer (chemical and controlled substances)	3,047

This fee schedule replaces the current fee schedule for controlled substance and chemical registrants in order to recover the full costs of the DCP so that it may continue to meet the programmatic responsibilities set forth by statute, Congress, and the President. As discussed, without an adjustment to fees, the DCP will be unable to continue current operations, necessitating dramatic program reductions, and possibly weakening the closed system of distribution. Particularly in light of increased needs for diversion control and demands upon the DCP outlined in the NPRM, the following fees for the FY 2012–2014 period will be effective April 16, 2012.

DEA continues to review possible methodologies as technology continues to afford increased tracking and allocation of specific costs. However, at this time, DEA has determined that it is both practicable and reasonable to continue to apply the weighted-ratio methodology. Consistent with the statutory direction to charge reasonable fees relating to the registration and control of the manufacture of controlled substances and listed chemicals, the 12.5 ratio is applied to the manufacturing registrant group. The 6.25 ratio applies to the ''distribution'' of controlled substances and listed chemicals, or the distributor registrant group. The ''dispensing'' registrant group has the largest number of registrants and each registrant has a relatively low registration and control cost, and a relatively smaller quantity and lower purity of controlled substances within their physical possession. Thus, the base fee, or the 1 ratio, is applied to the dispensing registrant group. The practitioner fee is the base fee on an annual basis but is collected every three years for administrative convenience.

Thus, the new fees, some of which are paid annually and some of which are paid every three years, range from $244 for ratio 1 to $3,047 for ratio 12.5, depending upon the particular registrant category. Specifically, the annual registration fee for practitioners, mid-level practitioners, dispensers, researchers, and narcotic treatment programs is $244. For administrative convenience for both the collection and the payment, practitioners will pay a combined registration fee of $731 every three years. The annual registration fee for distributors, importers, and exporters is $1,523, and for manufacturers the annual fee is $3,047. 21 CFR 1301.13 and 1309.11.

DEA Efforts To Control DCP Costs

DEA continually reviews the DCP and its methods of operation to ensure that it is fiscally responsible. The DCP works diligently to provide the registrants with cost effective and state-of-the-art means for complying with laws and regulations related to manufacturing, distributing, dispensing, importing, and exporting controlled substances and listed chemicals. Some examples of this include online registration, the Controlled Substance Ordering System

(CSOS) for electronic controlled substance ordering between registrants, and electronic reporting of thefts and significant losses of controlled substances.

DEA takes seriously its responsibilities to manage the DCP in an efficient and effective manner, particularly in light of the current economy. DEA cannot foresee Congressionally-mandated changes to the DCP, emerging trends, or how such trends may impact the DCP, but it is committed to managing in a fiscally responsible manner. The Office of Diversion Control is committed to reviewing the registration process to ensure efficiency and accountability as well as reviewing current regulations related to fee exempt registrants.

Summary of Impact of New Fee Relative to Current Fee

Affected Entities

In updating the number of registrants since the NPRM and the proposed fee calculation, there is a slight increase, with a total of 1,407,119 controlled substances and listed chemical registrants as of August 2011 (1,406,021 controlled substances registrants and 1,098 chemical registrants), as shown in Table 10.

TABLE 10—NUMBER OF REGISTRANTS BY BUSINESS ACTIVITY

Registrant class/business	Controlled substances	Chemicals
Pharmacy	66,934	
Hospital/Clinic	15,737	
Practitioner	1,115,398	
Teaching Institution	336	
Mid-Level Practitioner	193,877	
Researcher/Canine Handler	9,120	
Analytical Lab	1,500	
Narcotic Treatment Program	1,267	
Distributor	828	550
Reverse Distributor	60	
Importer	209	182
Exporter	233	159
Manufacturer	522	207
Total	1,406,021	1,098
Total (all registrants)	1,407,119	

* Data as of August 2011.

Not all registrants listed in Table 10 are subject to the fees. Publicly owned institutions, law enforcement agencies, the Indian Health Service, the Department of Veterans Affairs, Federal Bureau of Prisons, and military personnel are exempt from fees.

The number of registrations exceeds the number of individual registrants because some registrants are required to hold more than one registration. The CSA requires a separate registration for each location where controlled substances are handled and a separate registration for each business activity; that is, a registration for activities related to the handling of controlled substances and a registration for activities related to the handling of List I chemicals. Some registrants may conduct multiple activities under a single registration (*e.g.,* manufacturers may distribute substances they have manufactured without being registered as a distributor), but firms may hold multiple registrations for a single location. Individual practitioners who prescribe, but do not store controlled substances, may use a single registration at multiple locations within a state, but need separate registrations for each state in which they prescribe controlled substances.

Characteristics of Entities

This rule affects those manufacturers, distributors, dispensers, importers, and exporters of controlled substances and List I chemicals that are required to obtain and pay a registration fee with DEA pursuant to the CSA (21 U.S.C. 822 and 958(f)). As of August 2011, there was an increase of registrants from December 2010, with 1,407,119 controlled substances and List I chemical registrants (1,406,021 controlled substances registrants and 1,098 List I chemical registrants), as shown above in Table 10.

Pharmacies, hospitals/clinics, practitioners, teaching institutions, and mid-level practitioners comprise 98.9 percent of all registrants. These registrants register every three years. Other registrants maintain an annual registration. Registration and reregistration costs vary by registrant category as described in more detail in the sections below.

The fees affect a wide variety of entities. Table 11 indicates the sectors affected by this rule and their average annual revenue/income. Most DEA registrants are considered small entities under Small Business Administration (SBA) standards. There are 1,309,275 registered practitioners and mid-level practitioners as of August 2011, and almost all practitioners are considered small (annual revenues of less than $6 million to $8.5 million, depending on specialty).

TABLE 11—INDUSTRIAL SECTORS OF DEA REGISTRANTS

Sector	NAICS code	Average annual revenue *
Manufacturers:		

TABLE 11—INDUSTRIAL SECTORS OF DEA REGISTRANTS—Continued

Sector	NAICS code	Average annual revenue *
Petro-chemical Manufacturing (organic, inorganic)	32511	$1,390,485,971
Medicinal and Botanical Manufacturing	325411	27,601,834
Pharmaceutical Manufacturing	325412	144,173,821
Adhesive Manufacturing	325520	17,482,468
Toilet Preparation Manufacturing	325620	50,322,290
Other Chemical Manufacturing	325998	13,720,807
Distributors:		
Drugs and Druggist Sundries Wholesalers	424210	64,793,480
General Line Grocery Wholesalers	424410	45,518,407
Confectionary Merchant Wholesalers	414450	17,175,982
Chemical Wholesalers	424690	12,856,993
Tobacco Wholesalers	424940	71,437,205
Miscellaneous Wholesalers	424990	2,741,857
Pharmacies:		
Supermarkets	445110	7,247,540
Drug Stores	446110	4,829,487
Discount Stores	452112	26,535,201
Warehouse Clubs and Superstores	452910	76,300,280
Other:		
Testing Labs	541380	1,907,414
Packaging and Labeling Services	561910	2,696,904
Other Practitioners:		
Professional Schools	611310	1,373,855
Ambulatory Health Care Services	621	1,236,852
Hospitals	622	108,286,641

*Source: 2007 Economic Census. *http://www.census.gov/econ/census07.*

Supermarkets, discount stores, warehouse clubs, and superstores handle controlled substances through their distribution centers and pharmacies. Drug products containing List I chemicals are primarily distributed as over-the-counter medicines. These are distributed by drug wholesalers who specialize in non-prescription drugs, wholesalers who supply convenience stores, and grocery, pharmacy, and discount stores that operate their own distribution centers.

Economic Impact Analysis of Fee

This fee is expected to have two levels of impact. Initially, the fee adjustment will impact the registrants. Then the fee or portion of the fee increase may be passed on to the general public. The analysis below assumes that the impact of the fee adjustment is absorbed entirely by the registrants. Some commenters have confirmed this statement and have indicated some registrants may decide not to renew their registration as a result of the higher fees.

The registration fee may be a deductible business expense for some registrants. As a result, the increase in the fee may be dampened by reduced tax liability as a result of the increase in registration fee expense. For example, if a practitioner pays an additional $60 per year in registration fees and the combined federal and state income tax is 35 percent, the net cash impact is $39, not $60. The additional $60 causes income/profit to decrease by $60, decreasing the tax liability by $21. The net cash outlay is $39.[32]

DEA examined the new fees as a percentage of income for physicians, dentists, and physician's assistants in the practitioner registrant group and as a percentage of revenue for pharmacies, manufacturers, and distributors. This analysis indicates the fee adjustment is expected to have the greatest effect on small businesses in the practitioner registrant group. The majority of practitioners work in small businesses. Physicians, dentists, and physician's assistants reflect a representative sub-group of the practitioner registrant group. The effect of the fee increase is diminished by any increase in registrant income.

The table below describes the average income for physicians, dentists, and physician's assistants from 2004 to 2012, and reflects the impact of the fee as a percentage of average income. This analysis assumes that the fee is absorbed personally by each practitioner and is not passed on to customers in such forms as higher prices for medical services or products. The analysis also ignores the dampening effect of registration fees as a potentially deductible business expense.

TABLE 12—NEW FEE AS PERCENTAGE OF INCOME FY 2004–2012

Year	Average income [33]			Fee	Fee as percent of average income		
	Physicians	Dentists	Physician assistants	(Annual basis)	Physicians	Dentists	Physician assistants
2004	137,610	130,300	68,780	.....	.....	.....	.....
2005	138,910	133,680	71,070	.....	.....	.....	.....
2006	142,220	140,950	74,270	184	0.129	0.131	0.248

[32] This example is for illustration purposes only. Each entity should seek competent tax advice for tax consequences of this rule.

[33] *Source:* Bureau of Labor Statistics, *http://www.bls.gov.* Average income data for 2004 to 2009 is provided by the Bureau of Labor Statistics. 2010 to 2012 are estimated figures based on linear regression, where a straight-line increase is calculated from years 2004 to 2009, then using the line to estimate average income for 2010 to 2012.

TABLE 12—NEW FEE AS PERCENTAGE OF INCOME FY 2004–2012—Continued

Year	Average income [33]			Fee	Fee as percent of average income		
	Physicians	Dentists	Physician assistants	(Annual basis)	Physicians	Dentists	Physician assistants
2007	155,150	147,010	77,800	184	0.119	0.125	0.237
2008	165,000	154,270	81,610	184	0.112	0.119	0.225
2009	173,860	156,850	84,830	184	0.106	0.117	0.217
2010	179,370	163,901	87,933	184	0.103	0.112	0.209
2011	187,154	169,632	91,230	184	0.098	0.108	0.202
2012	194,939	175,363	94,528	244	0.125	0.139	0.258
Increase from 2007 to 2012	26	19	22	33	6	11	9
Increase from 2006 to 2012	37	24	27	33	−3	7	4

In 2007, the current fee of $184 on an annual basis represents 0.119 percent, 0.125 percent, and 0.237 percent of annual income for physicians, dentists, and physician's assistants respectively. In 2012, the new fee of $244 (on an annual basis) would represent approximately 0.125 percent, 0.139 percent, and 0.258 percent of annual income for physicians, dentists, and physician's assistants respectively. While the new fee is approximately 33 percent above the current fees implemented at the end of 2006, average incomes for physicians, dentists, and physician's assistants have increased 26 percent, 19 percent, and 22 percent respectively over the same period. This estimated increase in average income dampens the effect of the fee increase as a percentage of average income. The diminishing effect is more apparent when comparing 2012 to 2006, the year for which the current fee was calculated and implemented. Additionally, as the average income grows in 2013 and 2014, the income adjusted fees are not any higher than in recent history.

Exempt from the payment of registration fees is any hospital or other institution that is operated by an agency of the United States, of any state, or of any political subdivision or agency thereof. Likewise, an individual who is required to obtain a registration in order to carry out his/her duties as an official of a federal or state agency is also exempt from registration fees.[34] Fee exempt registrants are not affected by the new fees.

Conclusion

DEA concludes that this new fee schedule is not an economically significant regulatory action because it does not result in a materially adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.[35] The new fee will initially affect all fee paying registrants. The fees may eventually be passed on to the general public, diminishing the impact of the fee adjustment on individual registrants. The impact of the fee on registrants may also be diminished by a reduction in tax liabilities and an increase in average income. Additionally, hospitals and institutions operated by federal, state, or local governments, and their employees are exempt from registration fees.[36] Moreover, DEA believes that this final rule will enhance the public health and safety.

Regulatory Analyses

This final rule is necessary to ensure the full funding of the DCP through registrant fees as required by 21 U.S.C. 886a. It has been five years since the last fee change. As discussed above, statutory and operational changes to the DCP cannot be fully offset by improved operational efficiencies and require a recalculation of registrant fees. This rule does not change the requirement to register to handle controlled substances and/or List I chemicals but rather changes the annual fee associated with registration and reregistration that will allow DEA to meet its statutory obligations. DEA recognizes that the fee changes affect small businesses, but does not believe the relative individual impact is significant. The average annual increase in estimated registration fee collections is less than $100 million at an estimated annual increase of $76,226,568.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) (RFA), federal agencies must evaluate the impact of rules on small entities and consider less burdensome alternatives. DEA has evaluated the impact of this final rule on small entities as summarized above and concluded that although the rule will affect a substantial number of small entities, it will not impose a significant economic impact on any regulated entities.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted consistent with the Act and that a regulatory analysis on the effects or impact of this rulemaking on small entities has been done and summarized above.[37] While DEA recognizes that this increase in fees will have a financial effect on registrants, the change in fees will not have a significant economic impact. A change in fees is necessary to fully comply with 21 U.S.C. 886a and related statutes governing the DCP and the Diversion Control Fee Account by which DEA is legally mandated to collect fees to cover the full costs of the DCP as defined by all activities relating to the registration and control of the manufacture, distribution, import, export, and dispensing of controlled substances and listed chemicals.

This rule is not a discretionary action but implements statutory direction to charge reasonable fees to recover the full

[34] See 21 CFR 1301.21 for complete fee exemption requirements.

[35] In accordance with 25 U.S.C. 1616q, employees of a tribal health or urban Indian organization are exempt from ''payment of licensing, registration, and any other fees imposed by a Federal agency to the same extent that officer of the commissioned corps of the Public Health Service and other employees of the Service are exempt from those fees.'' To the extent that any hospital or other institution operated by or any individual practitioner associated with an Indian Tribal Government must pay fees, the economic impact is not substantial.

[36] See 21 CFR 1301.21 for complete requirements for exemption of registration fees.

[37] See ''Economic Impact Analysis of Final Rule on Controlled Substances and List I Chemical Registration and Reregistration Fees, DEA–346'' in this rulemaking docket found at www.regulations.gov.

costs of activities constituting the DCP through registrant fees (21 U.S.C. 821, 886a, and 958(f)). As discussed above and in the Economic Impact Analysis of the Final Rule found in the rulemaking docket at www.regulations.gov, DEA analyzed four fee calculation methodologies—Past-Based, Future-Based, Flat Fee, and Weighted-Ratio. DEA selected the weighted-ratio methodology to calculate the new fee structure. This approach has been used since Congress established registrant fees and continues to be a reasonable reflection of differing costs. Furthermore, the weighted-ratio does not create a disparity in the relative increase in fees from the current to the new fees. The weighted-ratios used by DEA to calculate the fee have proven effective and reasonable over time. Additionally, the selected calculation methodology accurately reflects the differences in activity level, notably in pre-registration and scheduled investigations, by registrant category—for example, these costs are greatest for manufacturers. DEA selected this option because it is the only option that resulted in reasonable fees for all registrant groups.

Under the weighted-ratio methodology, the individual effect on small business registrants is minimal. Practitioners represent 93 percent of all registrants, and nearly all practitioners are employed by small businesses pursuant to SBA standards. Practitioners will pay a three-year registration fee of $731 or the equivalent of $244 per year.

For consideration of the impact of the fee on small businesses, DEA analyzed the new registration fee as a percentage of annual income for a representative practitioner group: physicians, dentists, and physician's assistants. While there are many specialists listed in the Bureau of Labor Statistics income data, incomes for physicians, dentists, and physician's assistants are representative of the practitioner registrant group. For practitioners, the new fee, on an annual basis, would be $244; the annual increase would be $60 from the current fee. From the calculation performed in the preceding section, *Economic Impact Analysis of Final Rule,* the impacts of the new fees, $60 per year increase from current fees, were found to be 0.007 percent, 0.014 percent, and 0.022 percent (rounded to the third decimal) of annual income for physicians, dentists, and physician's assistants respectively, when normalized for income increases. In consideration of the calculated impact and potentially further mitigating factors discussed in the *Economic Impact Analysis of Final Rule,* DEA concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

Executive Orders 13563 and 12866

This final rule increasing registrant fees has been developed in accordance with the principles of Executive Orders 13563 and 12866. Supporting information may be found at www.regulations.gov. The difference between the current fee and the new fee—the fee increase—is less than $100 million annually. Specifically, the difference in the fees projected to be collected under the current fee rates and in the fees projected to be collected under the new fee rates for the three years of FY 2012–FY 2014 is $228,679,704. Thus, the annual increase is $76,226,568. This rule has been reviewed by the Office of Management and Budget.

The primary cost of this final rule is the increase in the registration fees paid by registrants. Benefits of the rule are an extension of the benefits of the DCP. The DCP is a strategic component of United States law and policy aimed at preventing, detecting, and eliminating the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes. The absence of or significant reduction in this program would result in enormous costs for the citizens and residents of the United States due to the diversion of controlled substances and listed chemicals into the illicit market as outlined in the Economic Impact Assessment found in the rulemaking docket.

Executive Order 12988

This final regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law, impose enforcement responsibilities on any state or diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule does not contain a federal mandate and will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $136,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. DEA notes that many governmental entities operate DEA-registered facilities and that they are currently fee exempt. Moreover, the effect of this fee adjustment on individual entities and practitioners is minimal. The majority of the affected entities will pay a fee of $731 for a three year registration period ($244 per year or an increase of $60 per year). This rule is promulgated in compliance with 21 U.S.C. 886a that the full costs of operating the DCP be collected through registrant fees.

Executive Order 13175

This rule is required by statute, will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

For the reasons set out above, 21 CFR parts 1301 and 1309 are amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958.

■ 2. Amend § 1301.13 by revising paragraph (e)(1) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1)

Business activity	Controlled substances	DEA Application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I–V ...	New–225 Renewal–225a.	$3,047	1	Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute or dispose of any substance or class for which not registered. Schedules II–V: Except a person registered to dispose of any controlled substance may conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfg. was issued.
(ii) Distributing	Schedules I–V ...	New–225 Renewal–225a.	1,523	1	
(iii) Reverse distributing.	Schedules I–V ...	New–225 Renewal–225a.	1,523	1	
(iv) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Central fill pharmacy, Teaching Institution).	Schedules II–V ..	New–224 Renewal–224a.	731	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture. A retail pharmacy may perform central fill pharmacy activities.
(v) Research	Schedule I	New–225 Renewal–225a.	244	1	A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in § 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances.
(vi) Research	Schedules II–V ..	New–225 Renewal–225a.	244	1	May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration and provided that the manufacture is not for the purposes of dosage form development; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances, and to persons exempted from registration pursuant to § 1301.24; and conduct instructional activities with controlled substances.
(vii) Narcotic Treatment Program (including compounder).	Narcotic Drugs in Schedules II–V.	New–363 Renewal–363a.	244	1	
(viii) Importing	Schedules I–V ...	New–225 Renewal–225a.	1,523	1	May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered.
(ix) Exporting	Schedules I–V ...	New–225 Renewal–225a.	1,523	1	

Business activity	Controlled substances	DEA Application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(x) Chemical Analysis.	Schedules I–V ...	New–225 Renewal–225a.	244	1	May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to § 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws related to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

* * * * *

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS, AND EXPORTERS OF LIST I CHEMICALS

■ 3. The authority citation for part 1309 is revised to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 952, 953, 957, 958.

■ 4. Revise § 1309.11 to read as follows:

§ 1309.11 Fee amounts.

(a) For each application for registration or reregistration to manufacture the applicant shall pay an annual fee of $3,047.

(b) For each application for registration or reregistration to distribute, import, or export a List I chemical, the applicant shall pay an annual fee of $1,523.

■ 5. In § 1309.21, revise paragraph (c) to read as follows:

§ 1309.21 Persons required to register.

* * * * *

(c) * * *

SUMMARY OF REGISTRATION REQUIREMENTS AND LIMITATIONS

Business activity	Chemicals	DEA Forms	Application fee	Registration period (years)	Coincident activities allowed
Manufacturing ..	List I	New–510	$3,047	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
	Drug products containing ephedrine, pseudoephedrine, phenylpropanolamine.	Renewal–510a.	3,047		
Distributing	List I	New–510	1,523	1	
	Scheduled listed chemical products.	Renewal–510a.	1,523		
Importing	List I	New–510	1,523	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
	Drug Products containing ephedrine, pseudoephedrine, phenylpropanolamine.	Renewal–510a.	1,523		
Exporting	List I	New–510	1,523	1	
	Scheduled listed chemical products.	Renewal–510a.	1,523		

Dated: March 12, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2012–6253 Filed 3–12–12; 11:15 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 627

[FHWA Docket No. FHWA–2011–0046]

RIN 2125–AF40

Value Engineering

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule updates regulations to enhance the integration of value engineering (VE) analysis in the planning and development of highway improvement projects. In issuing the final rule, FHWA revises the VE regulations to make them consistent with prior changes in legislation and regulations. This rulemaking does not otherwise impose any new burdens on States, revise the threshold of projects for which a VE analysis is required, or change the reporting structure now in place.

DATES: This final rule is effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Jon Obenberger, Preconstruction Team Leader, FHWA Office of Program Administration (HIPA), (202) 366–2221, or via email at *jon.obenberger@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov*. Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed rulemaking (NPRM), and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov*. The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Background

This rulemaking modifies existing regulations to make them consistent with several changes in applicable laws and regulations and to ensure compatibility with 23 U.S.C. 106 and the Office of Management and Budget (OMB) Circular A–131 on Value Engineering. These revisions also will address certain findings contained in a 2007 Office of Inspector General (OIG) report on value engineering in the Federal-aid highway program (FAHP) (*http://www.oig.dot.gov/sites/dot/files/pdfdocs/mh2007040.pdf*) in which the OIG recommended that the FHWA make certain changes to the VE policy.

The regulation is also being revised to enhance the consistency of VE analyses that are conducted and to improve FHWA's stewardship and oversight of these regulations. Additionally, these revisions will advance the integration of VE analysis into the planning and development of Federal-aid projects. Furthermore, these revisions will facilitate enhancements to the VE analyses agencies conduct and will foster the use of innovative technologies and methods while eliminating unnecessary and costly design elements, thereby improving the projects' performance, value, and quality. The proposed revisions are discussed in the section analysis below.

The VE analyses on Federal-aid highway projects were first established by Congress in the Federal-Aid Highway Act of 1970. The current requirement to conduct a VE analysis for certain Federal-aid highway projects is codified at 23 U.S.C. 106(e). The OMB Circular A–131 on Value Engineering, which was issued in May 1993 (*http://www.whitehouse.gov/omb/circulars_a131*), requires all Federal agencies to establish and maintain a VE program to improve the quality of their programs and acquisition functions. Under the OMB Circular, Federal agencies are required to develop and maintain policies and procedures to ensure a VE analysis is conducted on appropriate projects and report annually on the results and accomplishments of the analyses conducted and the program's accomplishments. The FHWA annually collects and reports on VE accomplishments achieved within the Federal-aid and Federal Lands Highway Programs. For VE studies conducted during the planning and development phases of projects, the FHWA tracks the number of studies conducted, the number of proposed and implemented recommendations, the value of the implemented recommendations, information regarding the State transportation agency's (STA's) VE program (e.g., policies, procedures, training conducted), and FHWA's stewardship and oversight of the VE program. Conducting VE analyses continues to be an effective tool in improving the quality and cost effectiveness of the FAHP projects. Additional information on STA, local authority, and FHWA VE programs and practices is available at: *http://www.fhwa.dot.gov/ve*.

Summary Discussion of Comments Received in Response to the NPRM

On June 22, 2011, the FHWA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** at 76 FR 36410 soliciting public comments on its proposal to update the existing regulations. The following presents an overview of the comments received in response to the NPRM. Comments were submitted by STAs, industry organizations, and individuals. The docket contained comments from nine parties, including seven STAs, the American Association of State Highway and Transportation Officials (AASHTO), and one individual.

Overall, the commenters supported the proposed rule, namely to enhance the integration of VE analysis in the planning and development of highway improvement projects. The FHWA appreciates the feedback the commenters provided and has carefully reviewed and analyzed all the comments that were submitted.

The AASHTO and STAs support conducting a VE analysis to improve the quality, efficiency, and effectiveness of developing and implementing highway improvement projects. While there was support for revising the VE regulations to ensure consistency with prior changes in legislation and regulations, AASHTO and several STAs commented on issues they believe FHWA needs to consider related to the type of projects subject to a VE analysis, and when the VE analysis is required to be conducted on applicable projects. The AASHTO and STAs also commented on the need to clarify definitions, when and what type of projects require a VE analysis, how life-cycle costs should be considered and integrated in a VE analysis, the expectations of STAs to facilitate VE training, and STA VE Program requirements.

Comments Directed at Specific Sections of the Proposed Revisions to 23 CFR Part 627

Section 627.1—Purpose and Applicability

The NPRM stated that STAs and local authorities shall establish the policies, procedures, functions, and capacity to monitor, assess, and report on the performance of the VE program. The AASHTO commented that local authorities are obligated to meet all Federal requirements and that reference to local authorities is redundant. Local public agencies (as specified in 23 CFR 635.105) already are required to meet all Federal requirements, which includes the requirement to operate under approved VE policies and procedures, when Federal-aid highway program funding is utilized on projects. The FHWA agrees with these comments. However, there are instances within this regulation where additional emphasis is provided to identify specific VE requirements for which STAs must ensure that local public agencies meet when administering projects utilizing Federal-aid highway program funding. Most references to local public agencies have been removed from 23 CFR part 627. The term local public agency was used throughout 23 CFR part 627 for consistency with 23 CFR 635.105.

Section 627.3—Definitions

The AASHTO and Wyoming DOT suggested adding a definition for a bridge project. The FHWA agreed with this comment, and the definition of a bridge project was added to section 627.3.

The AASHTO and several STAs provided comments regarding how final design is referenced with regard to the need to conduct a VE analysis (as specified in section 627.5). The FHWA agreed with these comments, and a definition of final design was added to section 627.3 by referencing its current definition in 23 CFR 636.103.

The AASHTO and several STAs commented on the need to consistently use one term when referencing a VE study or analysis. Currently, several terms are used interchangeably in practice to describe the VE process and analysis that is conducted. The FHWA agreed that one term should be used in this regulation. Part 627 has been changed to use the term ''VE analysis'' for consistency with the provisions in 23 U.S.C. 106(e).

The AASHTO and several STAs expressed concern with the lowest overall life-cycle cost (LCCA) being the primary factor to consider when evaluating and selecting VE recommendations. Under 23 U.S.C. 106(e) and (f), LCCA is required to be conducted during a VE analysis. The FHWA agreed with this comment and has modified the definition of VE analysis in section 627.3(e), by eliminating the use of ''lowest'' when used with LCCA, and has clarified that LCCA should be a consideration along with other factors, such as quality, environment, safety, and operational efficiency, in determining whether a VE recommendation is viable. The FHWA has made similar changes in other sections of this regulation where LCCA is referenced.

The Washington State DOT recommended FHWA require STAs to follow the guidance developed by SAVE International for a VE Job Plan, which would better align with the State's practices. The SAVE International guidance fits, in principle, with the particular requirements applicable to the FAHP, but not in its entirety. Thus, FHWA agreed and changed the definition of a VE Job Plan to outline the intent without replicating the SAVE International guidance in Section 627.3(f).

The AASHTO and four STAs commented that the proposed step in the VE Job Plan to evaluate and track the implemented VE recommendations would be a burden. The intent of FHWA was to track VE recommendations to ensure they are either approved or rejected and incorporated into the design of the project(s). The intent was not to evaluate the implementation of these recommendations in the construction phase. The FHWA recognizes that tracking VE recommendations into the construction phase would be a burden for STAs and has clarified the definition of the VE Job Plan to require the implementation of approved recommendations during the design phase.

The AASHTO and several STAs stated that as proposed, the VE Job Plan was too burdensome and that all the steps should not be required for every VE analysis. Specifically, smaller projects should have the ability to eliminate some of the steps in the VE Job Plan. The VE Job Plan identifies the phases to be followed in conducting a VE analysis. The VE Job Plan does not specify the analysis that is to be performed, level of effort expended, or how the VE analysis should be conducted. Thus, the VE Job Plan and the analysis that is actually conducted are scalable to meet the needs of each project. The changes described above that FHWA has made to the definition of a VE Job Plan identified only the phases to be followed in conducting a VE analysis. The changes do not specify the level of effort and analysis to be conducted, which should be determined by the STAs based on the specific conditions of each project. Section 627.3(f) was modified to clarify the intent and purpose of the VE Job Plan.

The Montana DOT stated that it would be beneficial to define what is included in the determination of total project costs. The FHWA agreed with this comment and added a definition for total project costs, which specifies that it includes all the costs associated with the environmental, design, right-of-way, utilities, and construction phases of a project.

Section 627.5—Applicable Projects

The AASHTO and several STAs stated that the requirements in sections 627.5(b)(4) were too restrictive because projects with completed designs should not require a VE analysis if their costs exceed the threshold due to construction cost escalation. Also, several STAs stated that after the final design of a project has been completed, a scope or design change should be the trigger to require a VE analysis, and not a 3 year delay. The FHWA agreed with these comments, and revisions were made to section 627.5 to clarify when a VE analysis is required.

The requirement to conduct VE analyses on projects that exceed the thresholds for applicable projects must be satisfied (as specified in 23 U.S.C. 106(e)), and FHWA does not have the authority to change these thresholds. A VE analysis is not required for projects with a total project cost that is under the thresholds established for applicable projects at the completion of final design if there is no scope or design change prior to the letting and the construction costs have escalated to where the project is over these thresholds. However, a VE analysis is required for a project that is under the thresholds established for applicable projects at the completion of final design, but a change made to the project's scope or design prior to the letting causes the total project cost to exceed these thresholds. By definition, if a scope or design change is made to a final set of plans, the project has gone back to the design phase where a VE analysis is required if these changes result in the project exceeding the thresholds established for applicable projects.

The AASHTO and the Kansas and Wyoming STAs recommended that FHWA reinsert the current provision (as specified in 23 CFR 627.5(d)) which states that VE analysis is an activity that is eligible for reimbursement from the Federal-aid highway program. This provision was removed since Federal eligibility for engineering services is defined in 23 CFR 1.11. Value engineering analysis is an engineering service and is therefore an expense that is eligible for reimbursement from the Federal-aid highway program funding. Accordingly, specifically identifying this cost as eligible in part 627 is redundant.

The AASHTO and several STAs commented that the proposed section 627.5 was confusing because it addressed two issues: FHWA-directed additional VE analysis, and the need for a STA's VE Policy to identify when it may be appropriate to conduct additional VE analyses. Some STAs stated that they should be solely responsible for identifying when additional studies are required while others felt that it should be a determination made in collaboration between the STA and FHWA. These two issues have been separated for clarification. Section 627.5(b)(5) specifies that FHWA may direct an additional VE analysis when appropriate, and section 627.5(d) was revised to address the single issue of the STA VE Policy identifying, on a programmatic basis, when any additional VE analysis should be considered or conducted in the planning and development of transportation projects. Additionally, this section was modified to clarify that when a VE analysis is required, it must be conducted prior to completing the final design of the project and prior to the release of the final request for proposals or other applicable VE

solicitation documents for design-build projects or other alternative project delivery methods.

The AASHTO and several STAs stated that the thresholds for applicable projects should be increased since it has been a number of years since the thresholds were established. The FHWA does not have the authority to increase the thresholds, as they are specified in the enabling legislation and codified in Federal law at 23 U.S.C. 106(e).

Section 627.7—VE Programs

The AASHTO and several STAs stated that the requirement to conduct the VE analysis prior to initiating final design will limit the ability of STAs to effectively manage their VE program. The FHWA agreed with these comments. This section was modified to clarify that when a VE analysis is required, it must be conducted prior to completing the final design of a project. For design-build projects, the VE analysis must be completed prior to the release of the final request for proposals or other applicable solicitation documents for alternative project delivery methods.

The AASHTO and several STAs stated that the term ''capacity building initiative'' needed more clarification. The FHWA agreed with these comments. This section was modified to clarify the need for STAs' VE programs to facilitate training in place of the originally proposed capacity building initiative.

Section 627.9—Conducting a VE Analysis

The AASHTO and Wyoming STA commented that the statement ''a consideration of combining or eliminating inefficient use of the existing facility'' in section 627.9(b) was unclear as written. The FHWA agreed with these comments. This sentence has been deleted from this section.

The AASHTO and several STAs stated that a VE analysis is only required on substructures and expressed concern over the inclusion of superstructure in the required VE analysis to be conducted on bridges. The STAs are required to consider the substructure requirements of a bridge (as specified in 23 U.S.C. 106(e)(4)(A)); however, this provision does not limit the VE analysis to only the substructure. The VE analysis conducted for bridges must ''be evaluated on engineering and economic basis, taking into consideration acceptable designs for bridges'' (as specified in 23 U.S.C. 106(e)(4)(B)). This consideration would include all bridge elements, substructure, superstructure, approaches, and any other design elements in the contract. Therefore, the FHWA determined that this section did not require any revisions.

The AASHTO and several STAs stated that the reference to conflict of interest in section 627.9(f) was unclear. The FHWA agrees with this comment and this section was modified to include a reference to FHWA's existing provisions at 23 CFR 1.33.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this rule is not an economically significant rulemaking action within the meaning of Executive Order 12866 and is not a significant rulemaking action within the meaning of the U.S. Department of Transportation regulatory policies and procedures. Additionally, this action complies with the principles of Executive Order 13563 by fostering the use of innovative technologies and methods while eliminating unnecessary and costly design elements. This rule establishes revised requirements for conducting VE analyses and it is anticipated that the economic impact of this rulemaking will be minimal. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 60l–612), the FHWA has evaluated the effects of this rule on small entities. The FHWA has determined that this action does not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses VE studies performed by STAs on certain projects using Federal-aid highway funds. As such, it affects only States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the RFA does not apply, and the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). Furthermore, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA evaluated this rule to assess the effects on State, local, and Tribal governments and the private sector. This rule does not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $140.8 million or more in any one year (2 U.S.C. 1532). Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this rule will not have a substantial direct effect or sufficient federalism implications to warrant preparation of a federalism assessment. The FHWA has also determined that this rule does not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et. seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations.

The FHWA has determined that this rule contains a requirement for data and information to be collected and maintained in support of compiling the results of the VE analyses that are conducted annually. The FHWA received no comments to this information collection.

It will take approximately 200 burden hours to compile the results of the VE analyses annually (400 analyses at 30 minutes each). It will take approximately 156 burden hours to

compile the results of all of the VE analyses that are conducted annually in each State DOT, the District of Columbia, and Puerto Rico and to submit these results to FHWA (52 analyses at 3 hours each). The estimated total burden to provide the additional information to attain full compliance with the final rule is 356 hours.

National Environmental Policy Act

The FHWA has analyzed this rule for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined it will not have any effect on the quality of the human and natural environment, because this rule merely establishes the requirements that apply to VE analyses whenever an applicable Federal-aid highway project is to be constructed. The promulgation of this regulation has been determined to be a categorical exclusion under 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this rule does not have substantial direct effects on one or more Indian Tribes; does not impose substantial direct compliance costs on Indian Tribal governments; and does not preempt Tribal law. This rule establishes the requirements that apply to VE analyses whenever an applicable Federal-aid highway project is to be constructed and does not impose any direct compliance requirements on Indian Tribal governments, nor does it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this rule does not constitute a significant energy action under that order since it will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA has determined that this rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this rule does not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 627

Grant programs—transportation, Highways and roads.

Issued on: January 27, 2012.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, the FHWA amends title 23 of the Code of Federal Regulations by revising part 627 to read as follows:

PART 627—VALUE ENGINEERING

Sec.

Authority: 23 U.S.C. 106(e), 106(g), 106(h), 112(a) and (b), 302, 315; and 49 CFR part 18.

§ 627.1 Purpose and applicability.

(a) The purpose of this part is to prescribe the programs, policies and procedures for the integration of value engineering (VE) into the planning and development of all applicable Federal-aid highway projects.

(b) Each State transportation agency (STA) shall establish and sustain a VE program. This program shall establish the policies and procedures identifying when a VE analysis is required. These policies and procedures should also identify when a VE analysis is encouraged on all other projects where there is a high potential to realize the benefits of a VE analysis.

(c) The STAs shall establish the policies, procedures, functions, and capacity to monitor, assess, and report on the performance of the VE program, along with the VE analyses that are conducted and Value Engineering Change Proposals (VECP) that are accepted. The STAs shall ensure that its subrecipients conduct VE analyses in compliance with this part.

§ 627.3 Definitions.

The following terms used in this part are defined as follows:

Bridge Project. A bridge project shall include any project where the primary purpose is to construct, reconstruct, rehabilitate, resurface, or restore a bridge.

Final Design. Final design has the same meaning as defined in 23 CFR 636.103.

Project. A portion of a highway that a STA or public authority proposes to construct, reconstruct, or improve as described in the preliminary design report or applicable environmental document. A project is defined as the logical termini in the environmental document and may consist of several contracts, or phases of a project or contract, which are implemented over several years.

Total Project Costs. The costs of all phases of a project including environment, design, right-of-way, utilities and construction.

Value Engineering (VE) Analysis. The systematic process of reviewing and assessing a project by a multidisciplinary team not directly involved in the planning and development phases of a specific project that follows the VE Job Plan and is conducted to provide recommendations for:

(1) Providing the needed functions, considering community and environmental commitments, safety, reliability, efficiency, and overall life-cycle cost (as defined in 23 U.S.C. 106(f)(2));

(2) Improving the value and quality of the project; and

(3) Reducing the time to develop and deliver the project.

Value Engineering (VE) Job Plan. A systematic and structured action plan for conducting and documenting the results of the VE analysis. While each VE analysis shall address each phase in the VE Job Plan, the level of analysis conducted and effort expended for each

phase should be scaled to meet the needs of each individual project. The VE Job Plan shall include and document the following seven phases:

(1) *Information Phase* Gather project information including project commitments and constraints.

(2) *Function Analysis Phase* Analyze the project to understand the required functions.

(3) *Creative Phase* Generate ideas on ways to accomplish the required functions which improve the project's performance, enhance its quality, and lower project costs.

(4) *Evaluation Phase* Evaluate and select feasible ideas for development.

(5) *Development Phase* Develop the selected alternatives into fully supported recommendations.

(6) *Presentation Phase* Present the VE recommendation to the project stakeholders.

(7) *Resolution Phase:* Evaluate, resolve, document and implement all approved recommendations.

(g) *Value Engineering Change Proposal (VECP).* A construction contract change proposal submitted by the construction contractor based on a VECP provision in the contract. These proposals may improve the project's performance, value and/or quality, lower construction costs, or shorten the delivery time, while considering their impacts on the project's overall life-cycle cost and other applicable factors.

§ 627.5 Applicable projects.

(a) A VE analysis shall be conducted prior to the completion of final design on each applicable project that utilizes Federal-aid highway funding, and all approved recommendations shall be included in the project's plans, specifications and estimates.

(b) Applicable projects shall include the following:

(1) Each project located on the National Highway System (NHS) (as specified in 23 U.S.C. 103) where the estimated total project cost is $25 million or more that utilizes Federal-aid highway funding;

(2) Each bridge project located on or off of the NHS where the estimated total project cost is $20 million or more that utilizes Federal-aid highway funding;

(3) Any major project (as defined in 23 U.S.C. 106(h)), on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the major project;

(4) Any project for which a VE analysis has not been conducted and a change is made to the project's scope or design between the final design and the letting which results in an increase in the project's total cost exceeding the thresholds identified in paragraphs (b)(1), (2) or (3) of this section; and

(5) Any other Federal-aid project the FHWA determines to be appropriate.

(c) An additional VE analysis is not required if, after conducting the VE analysis required under this part for any project meeting the criteria of paragraph (b) of this section, the project is subsequently split into smaller projects in the design phase or if the project is programmed to be completed by the letting of multiple construction projects. However, the STA may not avoid the requirement to conduct a VE analysis on an applicable project by splitting the project into smaller projects, or multiple construction projects.

(d) The STA's VE Program's policies and procedures shall identify when any additional VE analysis should be considered or conducted in the planning and development of transportation projects.

(e) For projects utilizing design-build and other alternative project delivery methods for which final design is not complete prior to the release of the final request for proposals or other applicable solicitation documents, the estimated total cost for purposes of the thresholds identified in paragraphs (b)(1) and (2) of this section, shall be based on the best estimate of the cost to construct the project.

§ 627.7 VE programs.

(a) The STA shall establish and sustain a VE program under which VE analyses are conducted for all applicable projects. The STA's VE program shall:

(1) Establish and document VE program policies and procedures that ensure the required VE analysis is conducted on all applicable projects, and encourage conducting VE analyses on other projects that have the potential to benefit from this analysis;

(2) Ensure the VE analysis is conducted and all approved recommendations are implemented and documented in a final VE report prior to the project being authorized to proceed to a construction letting;

(3) Monitor and assess the VE Program, and disseminate an annual report to the FHWA consisting of a summary of all approved recommendations implemented on applicable projects requiring a VE analysis, the accepted VECPs, and VE program functions and activities;

(4) Establish and document policies, procedures, and contract provisions that identify when VECP's may be used; identify the analysis, documentation, basis, and process for evaluating and accepting a VECP; and determine how the net savings of each VECP may be shared between the agency and contractor;

(5) Establish and document policies, procedures, and controls to ensure a VE analysis is conducted and all approved recommendations are implemented for all applicable projects administered by local public agencies; and ensure the results of these analyses are included in the VE program monitoring and reporting; and

(6) Provide for the review of any project where a delay occurs between when the final plans are completed and the project advances to a letting for construction to determine if a change has occurred to the project's scope or design where a VE analysis would be required to be conducted (as specified in 23 CFR 627.5(b)).

(b) STAs shall ensure the required VE analysis has been performed on each applicable project including those administered by subrecipients, and shall ensure approved recommendations are implemented into the project's plans, specifications, and estimate.

(c) STAs shall designate a VE Program Coordinator to promote and advance VE program activities and functions. The VE Coordinator's responsibilities should include establishing and maintaining the STA's VE policies and procedures; facilitating VE training; ensuring VE analyses are conducted on applicable projects; monitoring, assessing, and reporting on the VE analyses conducted and VE program; participating in periodic VE program and project reviews; submitting the required annual VE report to the FHWA; and supporting the other elements of the VE program.

§ 627.9 Conducting a VE analysis.

(a) A VE analysis should be conducted as early as practicable in the planning or development of a project, preferably before the completion of the project's preliminary design. At a minimum, the VE analysis shall be conducted prior to completing the project's final design.

(b) The VE analysis should be closely coordinated with other project development activities to minimize the impact approved recommendations might have on previous agency, community, or environmental commitments; the project's scope; and the use of innovative technologies, materials, methods, plans or construction provisions.

(c) For projects utilizing design-build and other alternative project delivery methods that will be advertised prior to the completion of final design, the STA or local public agency shall conduct a VE analysis prior to the release of the

final Request for Proposals or other applicable solicitation documents.

(d) STAs shall ensure the VE analysis meets the following requirements:

(1) Uses a multidisciplinary team not directly involved in the planning or design of the project, with at least one individual who has the training and experience with leading a VE analysis;

(2) Develops and implements the VE Job Plan;

(3) Produces a formal written report outlining, at a minimum:

(i) Project information;

(ii) Identification of the VE analysis team;

(iii) Background and supporting documentation, such as information obtained from other analyses conducted on the project (e.g., environmental, safety, traffic operations, constructability);

(iv) Documentation of the stages of the VE Job Plan which would include documentation of the life-cycle costs that were analyzed;

(v) Summarization of the analysis conducted;

(vi) Documentation of the proposed recommendations and approvals received at the time the report is finalized; and

(vii) The formal written report shall be retained for at least 3 years after the completion of the project (as specified in 49 CFR 18.42).

(e) For bridge projects, in addition to the requirements in paragraph (d) of this section, the VE analyses shall:

(1) Include bridge substructure and superstructure requirements that consider alternative construction materials; and

(2) Be conducted based on:

(i) An engineering and economic assessment, taking into consideration acceptable designs for bridges; and

(ii) An analysis of life-cycle costs and duration of project construction.

(f) STAs and local public agencies may employ qualified consultants (as defined in 23 CFR 172) to conduct a VE analysis. The consultant shall possess the training and experience required to lead the VE analysis. A consulting firm or individual shall not be used to conduct or support a VE analysis if they have a conflict of interest (as specified in 23 CFR 1.33).

(g) VECPs, STAs, and local public agencies are encouraged to use a VECP clause (or other such clauses under a different name) in an applicable project's contract, allowing the construction contractor to propose changes in the project's plans, specifications, or other contract documents. Whenever such clauses are used, the STA and local authority will consider changes that could improve the project's performance, value and quality, shorten the delivery time, or lower construction costs, while considering impacts on the project's overall life-cycle cost and other applicable factors. The basis for a STA or local authority to consider a VECP is the analysis and documentation supporting the proposed benefits that would result from implementing the proposed change in the project's contract or project plans.

(h) Proposals to accelerate construction after the award of the contract will not be considered a VECP and will not be eligible for Federal-aid highway program funding participation. Where it is necessary to accelerate construction, STAs and local public agencies are encouraged to use the appropriate incentive or disincentive clauses so that all proposers will take this into account when preparing their bids or price proposals.

[FR Doc. 2012–6244 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–22–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in April 2012 and interest assumptions under the asset allocation regulation for valuation dates in the second quarter of 2012. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@PBGC.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for April 2012 and updates the asset allocation interest assumptions for the second quarter (April through June) of 2012.

The second quarter 2012 interest assumptions under the allocation regulation will be 3.11 percent for the first 20 years following the valuation date and 3.36 percent thereafter. In comparison with the interest assumptions in effect for the first quarter of 2012, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.63 percent in the select rate, and a decrease of 0.34 percent in the ultimate rate (the final rate).

The April 2012 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for March 2011, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during April 2012, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 222, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
222	4–1–12	5–1–12	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 222, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
222	4–1–12	5–1–12	1.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for April–June 2012, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
April–June 2012	0.0311	1–20	0.0336	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of March 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–6301 Filed 3–14–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–1095]

RIN 1625–AA08

Special Local Regulations; Patriot Challenge Kayak Race, Ashley River, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the Ashley River in Charleston, South Carolina during the Patriot Challenge Kayak Race on Saturday, April 28, 2012. Approximately 150 paddle boats are anticipated to participate in the Patriot Challenge Kayak Race. Participant paddle boats will include kayaks, canoes, and paddleboards. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the race. The special local regulations consist of a series of moving buffer zones around participant vessels as they transit the Ashley River from Brittlebank Park to Tidewater Reach and back to Brittlebank Park. Persons and vessels that are not participating in the race are prohibited from entering, transiting through, anchoring in, or remaining within any of the buffer zones unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 12:30 p.m. until 3:30 p.m. on April 28, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–1095 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1095 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign John R. Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.R.Santorum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 22, 2011, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Patriot Challenge Kayak Race, Ashley River, Charleston, SC in the **Federal Register** (76 FR 79571). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during the Patriot Challenge Kayak Race.

Discussion of Rule

On Saturday, April 28, 2012, the Patriot Challenge Kayak Race is scheduled to take place on the waters of the Ashley River in Charleston, South Carolina. The race will begin at Brittlebank Park, transit southeast on the Ashley River, head north between Shutes Folly Island and the Charleston peninsula, and then turn around in Tidewater Reach. The race will return to Brittlebank Park by the same route. Approximately 150 paddle boats are anticipated to participate in the Patriot Challenge Kayak Race. Participant paddle boats will include kayaks, canoes, and paddleboards.

This rule establishes special local regulations on the Ashley River in Charleston, South Carolina consisting of a series of buffer zones around vessels participating in the Patriot Challenge Kayak Race. These buffer zones are as follows: (1) All waters within 75 yards of the lead safety vessel; (2) all waters within 75 yards of the last safety vessel; and (3) all waters within 100 yards of all other participating vessels, including kayaks, canoes, and paddleboards. Notice of the special local regulations, including the identities of the lead safety vessel and the last safety vessel, will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The special local regulations will be enforced from 12:30 p.m. until 3:30 p.m. on April 28, 2012. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zones unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the buffer zones by contacting the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within any of the buffer zones is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization are required to comply with the instructions of the Captain of the Port Charleston or a designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only three hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the

surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Ashley River encompassed within the special local regulations from 12:30 p.m. until 3:30 p.m. on April 28, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a regatta or marine parade. Under figure 2–1, paragraph (34)(h), of the Instruction, an

environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–1095 to read as follows:

§ 100.35T07–1095 Special Local Regulations; Patriot Challenge Kayak Race, Ashley River, Charleston, SC.

(a) *Regulated Areas.* The following buffer zones are regulated areas during the Patriot Challenge Kayak Race: all waters within 75 yards of the lead safety vessel; all waters within 75 yards of the last safety vessel; and all waters within 100 yards of all other participating vessels, including kayaks, canoes, and paddleboards. The identities of the lead safety vessel and the last safety vessel will be provided prior to the Patriot Challenge Kayak Race by Local Notice to Mariners and Broadcast Notice to Mariners. The race will begin at Brittlebank Park, transit southeast the Ashley River, head north between Shutes Folly Island and the Charleston peninsula, and then turn around in Tidewater Reach. The race will return to Brittlebank Park by the same route.

(b) *Definition.* The term ''*designated representative*'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 12:30 p.m. until 3:30 p.m. on April 28, 2012.

Dated: February 28, 2012.

Michael F. White, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2012–6319 Filed 3–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2012–0105]

Safety Zone; San Francisco Fireworks Display, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 11 a.m. to 10:10 p.m. on April 14, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a 100 foot safety zone around the fireworks barge off of Pier 50 in position 37°46′28″ N, 122°23′06″ W (NAD 83) from 11 a.m. until 8:30 p.m. on April 14, 2012. From 8:30 p.m. to 8:40 p.m. on April 14, 2012 the loaded barge will transit from Pier 50 to the launch site near Pier 48 in position 37°46′39.9″ N, 122°23′06.78″ W (NAD83). The 100 foot safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. Upon the commencement of the fireworks display, scheduled to take place from 9:30 p.m. to 9:45 p.m. on April 14, 2012, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet around the launch site near Pier 48 in position 37°46′39.9″ N, 122°23′06.78″ W (NAD83) for the San Francisco Giants Fireworks Display in 33 CFR 165.1191. This safety zone will be in effect from 11 a.m. to 10:10 p.m. on April 14, 2012.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: February 21, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–6223 Filed 3–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0138]

RIN 1625–AA00

Safety Zone; Non-Compliant Vessel Pursuit Training Course, Wando River, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Wando River during the Non-Compliant Vessel Pursuit Training Course in Charleston, South Carolina from Monday, March 19, 2012 through Friday, March 23, 2012. The safety zone is necessary to protect the public from hazards associated with executing small boat law enforcement tactics and high speed maneuvers during the training course. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 7 a.m. on March 19, 2012 through 3 p.m. on March 23, 2012. This rule will be enforced from: (1) 7 a.m. until 11:30 a.m. and 12:30 p.m. until 4:30 p.m. on March 19 and 20, 2012; (2) 7 a.m. until 11:30 a.m., 12:30 p.m. until 4:30 p.m., and 8 p.m. until 10 p.m. on March 21 and 22, 2012; and (3) 7 a.m. until 11:30 a.m. and 12:30 p.m. until 3 p.m. on March 23, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0138 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0138 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Ensign John R. Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.R.Santorum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not have necessary information regarding the training course until February 22, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the training course. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the small boat tactical training and maneuvering.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from hazards associated with executing small boat law enforcement tactics and high speed maneuvers during the training course.

Discussion of Rule

From Monday, March 19, 2012 through Friday, March 23, 2012, the Maritime Law Enforcement Academy will conduct tactical training and high speed maneuvering with Coast Guard small boats. This tactical training and high speed maneuvering will include application of various law enforcement tactics, high speed turns, and outside loop maneuvers.

The temporary safety zone encompasses certain waters of the Wando River in Charleston, South Carolina. This safety zone will be enforced from: (1) 7 a.m. until 11:30 a.m. and 12:30 p.m. until 4:30 p.m. on March 19 and 20, 2012; (2) 7 a.m. until 11:30 a.m., 12:30 p.m. until 4:30 p.m., and 8 p.m. until 10 p.m. on March 21 and 22, 2012; and (3) 7 a.m. until 11:30 a.m. and 12:30 p.m. until 3 p.m. on March 23, 2012. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners and Marine Safety Information Bulletins. The Coast Guard will also provide notice of the safety zone by on-scene designated representatives.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget

has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for a total of 45 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4)advance notification of the safety zone will be made to the local maritime community by Broadcast Notice to Mariners and Marine Safety Information Bulletins.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Wando River encompassed within the temporary safety zone from 7 a.m. on March 19, 2012 through 3 p.m. on March 23, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of 45 hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0138 to read as follows:

§ 165.T07–0138 Safety Zone; Non-Compliant Vessel Pursuit Training Course, Wando River, Charleston, SC.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Wando River, bank to bank and surface to bottom between Daybeacon #13, at position 32°51′46″ N, 79°53′26″ W; and Daybeacon #23, at position 32°52′31″ N, 79°51′15″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''*designated representative*'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 7 a.m. on March 19, 2012 through 3 p.m. on March 23, 2012. This rule will be enforced from:

(1) 7 a.m. until 11:30 a.m. and 12:30 p.m. until 4:30 p.m. on March 19 and 20, 2012;

(2) 7 a.m. until 11:30 a.m., 12:30 p.m. until 4:30 p.m., and 8 p.m. until 10 p.m. on March 21 and 22, 2012; and

(3) 7 a.m. until 11:30 a.m. and 12:30 p.m. until 3 p.m. on March 23, 2012.

Dated: March 7, 2012.

M.F. White,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2012–6312 Filed 3–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0129]

Security Zone; Portland Rose Festival on Willamette River; Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Portland Rose Festival Security Zone in 33 CFR 165.1312 from 11 a.m. on June 6, 2012 until 11 a.m. on June 11, 2012. This action is necessary to ensure the security of maritime traffic, including the public vessels present on the Willamette River during the Portland Rose festival. During the enforcement period, no person or vessel may enter or remain in the security zone without permission of the Captain of the Port, Columbia River, Oregon.

DATES: The regulations in 33 CFR 165.1312 will be enforced from 11 a.m. on June 6, 2012 until 11 a.m. on June 11, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email ENS Ian McPhillips, Waterways Management Division, MSU Portland, Oregon, Coast Guard; telephone 503–240–9319, email *Ian.P.McPhillips@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zone for the Portland Rose Festival detailed in 33 CFR 165.1312 for all vessels operating in the Columbia River Captain of the Port Zone from 11 a.m. on June 6, 2012 until 11 a.m. on June 11, 2012.

Under the provisions of 33 CFR 165.1312 and 33 CFR part 165, subpart D, no person or vessel may enter or remain in the security zone without permission of the Captain of the Port, Columbia River. Persons or vessels wishing to enter the security zone may request permission to do so from the on scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1312 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via the Local Notice to Mariners.

Dated: February 24, 2012.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–6313 Filed 3–14–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0686, FRL–9635–5]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a proposed revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M program to improve performance of the program and has requested that the SIP be revised to include these

changes. Chief among the amendments EPA is approving is New Jersey's amendment to its I/M program to establish a new exhaust emission test for gasoline fueled vehicles and the extension of the new vehicle inspection exemption from 4 years to 5 years. EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: *Effective Date:* This rule will be effective April 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2011–0686. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Jenna Salomone, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3741, *salomone.jenna@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking?

EPA is approving a revision, submitted by New Jersey on December 15, 2009, and a supplemental revision, submitted by New Jersey on October 12, 2010, to the New Jersey State Implementation Plan (SIP) pertaining to New Jersey's motor vehicle enhanced inspection and maintenance (I/M) program. New Jersey provided EPA with documentation on the emission impacts that will result from proposed changes to New Jersey's enhanced I/M program including a comparison to the EPA I/M performance standard. The revisions submitted by New Jersey include a new exhaust emission test for gasoline fueled vehicles; the extension of the new vehicle inspection exemption from 4 years to 5 years; the elimination of repair cost waivers; the increase in the inspection frequency (to annual) for certain classes of commercial vehicles such as limousines, taxis and jitneys; and the subjecting of light duty diesel vehicles to emissions testing.

II. What was included in New Jersey's proposed SIP submittal?

On December 15, 2009, New Jersey submitted a revision to the State of New Jersey's I/M program SIP. The submittal consists of new rules and rule amendments to the New Jersey Department of Environmental Protection's rules at New Jersey Administrative Code (N.J.A.C.) 7:27–15, 7:27B–5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20–7, 13:20–24, 13:20–26, 13:20–28, 13:20–29, 13:20–32, 13:20–33, 13:20–43, 13:20–44, 13:20–45, and N.J.A.C. 13:21–15.8 and 13:21–15.12.

The proposed changes to New Jersey's I/M program include the establishment of a new exhaust emission test for gasoline fueled vehicles. The Two Speed Idle (TSI) test will replace both the Acceleration Simulation Mode (ASM5015) and 2500 Revolutions per Minute (RPM) tests. The TSI test is a tailpipe test which checks the vehicle's hydrocarbons, carbon monoxide, oxygen and carbon dioxide (HC, CO, O_2 and CO_2, respectively) exhaust emissions concentration levels at two different engine speeds, the regular idle and a fast idle around 2500 RPM. The ASM5015 test measures the concentrations of HC, CO and oxides of nitrogen (NO_X), in a vehicle's tailpipe emissions when a vehicle is running under marginal load and at a steady rate or RPM. The 2500 RPM test is a tailpipe test that checks the vehicle's HC, CO, O_2 and CO_2 exhaust emissions concentration levels at 2500 RPM.

The proposed changes to New Jersey's I/M program also include: the elimination of repair cost waivers, the increase in the inspection frequency (to annual) for certain classes of commercial vehicles such as limousines, taxis and jitneys, and the subjecting of light duty diesel vehicles to emissions testing. New Jersey provided documentation on the emission impacts that will result from proposed changes to New Jersey's I/M program including a comparison to the EPA I/M performance standard.

On October 12, 2010, New Jersey submitted a supplemental I/M program SIP revision which consisted of amendments to chapter 8 of Title 39 of the Revised Statutes of the state of New Jersey at R.S. 39:8–1, 39:8–2, and 39:8–3. The submittal includes an extension of the new vehicle inspection exemption from 4 years to 5 years and an acknowledgement with supporting justification that New Jersey's decentralized I/M network (the private inspection facilities, or PIFs) is currently 96 percent as effective as New Jersey's centralized I/M network (the centralized inspection facilities, or CIFs). PIFs were previously assumed to be 80 percent as effective as CIFs, which New Jersey considered to likely be very conservative in light of the program and technology changes that were implemented in the years following the 80 percent effectiveness assumption. In May 2010, New Jersey authorized MACTEC Engineering and Consulting, Inc. to assess improvements in effectiveness of the decentralized program and to determine a reasonable effectiveness fraction that may be supported by data and technical reasoning. MACTEC analyzed the effectiveness of the decentralized PIF network relative to the CIF (centralized) network. The relative effectiveness of PIFs was based on data collected from PIFs and CIFs in 2009. As a result of the analysis, MACTEC determined that New Jersey should increase the effectiveness factor for PIFs and provided the following justifications:

- Fail rates for OBD inspections in PIFs were found to be nearly identical to those in CIFs;
- An analysis of triggers for OBD tests performed in 2009 showed that over 99% of inspections in PIFs have no indications of fraud;
- New Jersey has implemented several additional OBD triggers in the new program, which will further reduce the incidence of fraud.

On July 8, 2010, New Jersey submitted to EPA the final report prepared by MACTEC, dated June 23, 2010 entitled ''New Jersey Motor Vehicle Inspection Program PIF Effectiveness Study.''

On September 16, 2011 (76 FR 57691), EPA proposed to approve New Jersey's revised I/M program. For a detailed discussion on the content and requirements of the revisions to New Jersey's regulations, the reader is referred to EPA's proposed rulemaking action.

III. What comments did EPA receive in response to its proposal?

In response to EPA's September 16, 2011 proposed rulemaking action, EPA received no comments.

IV. What are EPA's conclusions?

EPA's review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the Clean Air Act, 40 CFR part 51 and all of EPA's technical requirements for an approvable Enhanced I/M program. EPA is approving the rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. 7:27–15, 7:27B–5 (replaces B–4), effective November 16, 2009, the Motor Vehicle Commission rules at N.J.A.C. 13:20–7, 13:20–24, 13:20–26, 13:20–28, 13:20–29, 13:20–32, 13:20–33, 13:20–43, 13:20–44, 13:20–45, and N.J.A.C. 13:21–15.8 (replaces 15.7), 13:21–15.12, all effective October 19, 2009 and the amendments to chapter 8 of Title 39 of the Revised Statutes of the state of New Jersey at R.S. 39:8–1, 39:8–2, and 39:8–3, effective July 1, 2010, which incorporate New Jersey's motor vehicle inspection program requirements. The Clean Air Act gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 1, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(92) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the New Jersey State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program, dated December 15, 2009.

(i) Incorporation by reference:

(A) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code, Subchapter 15, ''Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles,'' effective November 16, 2009, and Appendix B–5, ''Air Test Method 5: Testing Procedures for Gasoline-Fueled Motor Vehicles,'' effective November 16, 2009.

(B) Amendments to Chapter 20, Title 13 of the New Jersey Administrative Code, Subchapter 7, ''Vehicle Inspection'' (Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6); Subchapter 24, ''Motorcycles'' (Section: 24.20); Subchapter 26, ''Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles'' (Sections: 26.2 and 26.16); Subchapter 28, ''Inspection of New Motor Vehicles''

(Sections 28.3, 28.4 and 28.6); Subchapter 29, ''Mobile Inspection Unit'' (Sections: 29.1, 29.2, 29.3); Subchapter 32, ''Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities''; Subchapter 33, ''Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities''; Subchapter 43, ''Enhanced Motor Vehicle Inspection and Maintenance Program''; Subchapter 44, ''Private Inspection Facility Licensing''; and Subchapter 45, ''Motor Vehicle Emission Repair Facility Registration,'' all effective October 19, 2009.

(C) Amendments to Chapter 21, Title 13 of the New Jersey Administrative Code, Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers'' (Sections: 15.8 and 15.12), effective October 19, 2009.

(D) Amendments to Chapter 8, Title 39 of the Revised Statutes of the State of New Jersey at R.S. 39:8–1, 39:8–2, and 39:8–3, effective July 1, 2010.

(ii) Additional material:

(A) December 15, 2009, letter from Mark N. Mauriello, Acting Commissioner, NJDEP, to Judith A. Enck, Regional Administrator, EPA, requesting EPA approval of a revision to the State of New Jersey's I/M program SIP.

(B) October 12, 2010, letter from Bob Martin, Commissioner, NJDEP, to Judith A. Enck, Regional Administrator, EPA, requesting EPA approval of the supplemental revision to the State of New Jersey's I/M program SIP.

(C) July 8, 2010, letter from Bob Martin, Commissioner, NJDEP, to Judith A. Enck, Regional Administrator, EPA, requesting EPA approval of the supplemental revision to the State of New Jersey's I/M program SIP.

■ 3. Section 52.1605 is amended by:
■ a. Revising the entry under Title 7, Chapter 27, for Subchapter 15;
■ b. Removing the entry for Title 7, Chapter 27B: Subchapter 4;
■ c. Adding new entry Title 7, Chapter 27B, Subchapter 5 in numerical order;
■ d. Revising the entries under Title 13, Chapter 20 for Subchapters 7, 24, 26, 28, 29, 32, 33, 43, 44, and 45;
■ e. Removing the entry for Title 13, Chapter 21, Subchapter 15, Section 15.7;
■ f. Adding new entry Title 13, Chapter 21, Subchapter 15, Sections 15.8 and 15.12 in numerical order; and
■ g. Adding new entry Title 39, Chapter 8, Subchapters 1, 2 and 3 in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27:			
* * * * * * *			
Subchapter 15, ''Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles.''	November 16, 2009	March 15, 2012 [Insert **Federal Register** page citation].	
* * * * * * *			
Title 7, Chapter 27B:			
* * * * * * *			
Subchapter 5, ''Air Test Method 5: Testing Procedures For Gasoline-Fueled Vehicles.''	November 16, 2009	March 15, 2012 [Insert **Federal Register** page citation].	
* * * * * * *			
Title 13, Chapter 20:			
* * * * * * *			
Subchapter 7, ''Vehicle Inspection.'' Sections: 7.1. 7.2, 7.3, 7.4, 7.5, 7.6.	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 24, ''Motorcycles.''Section 20	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 26, ''Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles.'' Section: 26.2, 26.16.	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 28, ''Inspection of New Motor Vehicles.'' Sections: 28.3, 28.4, 28.6.	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 29, ''Mobile Inspection Unit.''Sections: 29.1, 29.2, 29.3.	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 32, ''Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities.''	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 33, ''Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities.''	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 43, ''Enhanced Motor Vehicle Inspection and Maintenance Program.''	November 19, 2009	March 15, 2012 [insert FR page citation].	
Subchapter 44, ''Private Inspection Facility Licensing.''	November 19, 2009	March 15, 2012 [insert FR page citation].	

State regulation	State effective date	EPA approved date	Comments
Subchapter 45, ''Motor Vehicle Emission Repair Facility Registration.''	November 19, 2009	March 15, 2012 [insert FR page citation].	
Title 13, Chapter 21:			
* *	* *	* *	*
Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers.'' Sections 15.8 and 15.12.	November 19, 2009	March 15, 2012 [insert FR page citation].	
* *	* *	* *	*
Title 39, Chapter 8 Subchapters 1, 2 and 3 ..	July 1, 2010	March 15, 2012 [insert FR page citation].	

[FR Doc. 2012–6208 Filed 3–14–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R08–OAR–2011–0015; FRL–9646–8]

Clean Air Act Full Approval of Title V Operating Permits Program; Southern Ute Indian Tribe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating full approval of the Title V Operating Permits Program submitted by the Southern Ute Indian Tribe (Tribe). The Tribe's Title V Operating Permit Program (Title V Program) was submitted for the purpose of administering a tribal program for issuing operating permits to all major stationary sources, and certain other sources on the Southern Ute Indian Reservation (Reservation).

DATES: This final rule is effective March 15, 2012, and is applicable beginning March 2, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0015.

All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexis North, Air Program, Mailcode 8ENF–AT, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7005, or *north.alexis@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The word *Commission* means the joint Southern Ute Indian Tribe/State of Colorado Environmental Commission.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) the word *Title V Program* means the Tribe's *Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, the subsequent *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010 and the *Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012.

(v) The word *Tribe* means the Southern Ute Indian Tribe, unless the context indicates otherwise.

Table of Contents

I. Background

Under Title V of the Clean Air Act (the Act or CAA) as amended (1990), EPA has promulgated rules that define the minimum elements of a full

approval of a Title V operating permits program for state and tribal permitting authorities. The corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state and tribal title V operating permits programs can be found at 57 FR 32250 (July 21, 1992) and 63 FR 1322 (January 10, 2000) and are codified at 40 CFR part 70.

In addition, as part of the 1990 Amendments to the CAA, Congress enacted Section 301(d) authorizing EPA to ''treat Indian tribes as states'' under the Act so that tribes may develop and implement CAA programs in a similar manner as states within tribal reservations or in other areas subject to tribal jurisdiction. Section 301(d)(2) of the Act authorizes EPA to promulgate regulations specifying those provisions of the CAA ''for which it is appropriate to treat Indian tribes as States.'' 42 U.S.C. 7601(d)(2).

On February 12, 1998, EPA issued a final rule specifying those provisions of the CAA for which it is appropriate to treat eligible Indian tribes in a similar manner as states, known as the Tribal Authority Rule (TAR). 63 FR 7254, codified at 40 CFR part 49. As a general matter, the regulations authorize eligible Indian tribes to have the same rights and responsibilities as States under the CAA; however, EPA also determined in the TAR that it is not appropriate to treat Indian tribes in a similar manner as states for purposes of specific CAA program submittal and implementation deadlines. This is because, among other reasons (discussed at 59 FR at 43,964–65), although the CAA contains many provisions mandating the submittal of state plans, programs, or other requirements by certain dates, the Act does not similarly require Indian tribes to develop and seek approval of CAA programs.

Thus, Indian tribes are generally not subject to CAA provisions that specify a deadline by which something must be accomplished, e.g., provisions mandating the submission of state title V operating permits programs under sections 502(d)(1), 502(d)(2)(B), and 502(d)(3)of the Act. 40 CFR 49.4.

A tribe that meets the eligibility criteria for treatment in a similar manner as a state (TAS) may, however, choose to implement a CAA program. A tribe may also submit reasonably severable portions of a CAA program, if it can demonstrate that its proposed air program is not integrally related to program elements not included in the plan submittal and is consistent with applicable statutory and regulatory requirements. 40 CFR 49.7(c); see also CAA § 110(o). This modular approach is intended to give Indian tribes the flexibility to address their most pressing air quality issues and acknowledges that Indian tribes often have limited resources with which to address their environmental concerns. Consistent with the exceptions listed in 40 CFR 49.4, once submitted, an Indian tribe's proposed air program will be evaluated in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar state submittal. 40 CFR 49.9(h).

EPA expects Indian tribes to fully implement and enforce their approved CAA programs and, as with states, EPA retains its authority to impose sanctions for failure to implement an approved air program. *See* 59 FR 43,956 at 43,965 (Aug. 25, 1994).

The CAA allows Indian tribes to develop and submit title V operating permit programs to EPA at their own discretion. The EPA's title V operating permit program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for interim approval, full approval or disapproval. The Tribe has requested operating permit program approval and this action is in response to that request.

II. Response to Comments

EPA did not receive any comments on our March 9, 2011 **Federal Register** notice proposing interim approval of the Tribe's Title V Program.

III. Evaluation of the Tribe's Authorities

The EPA completed a review of the Tribe's authority to regulate air pollution sources located within the exterior boundaries of the Reservation. Under section 301(d) of the CAA and the TAR, EPA may treat a tribe in a similar manner as a state for purposes of administering certain CAA programs or grants if the tribe demonstrates that: (1) It is a federally-recognized tribe; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions to be exercised by the tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation (or in other areas under the tribe's jurisdiction); and (4) it can reasonably be expected to be capable, in EPA's judgment, of carrying out the functions for which it seeks approval, consistent with the CAA and applicable regulations. 40 CFR 49.6. The sections below outline the details of EPA's review of the Tribe's authorities.

A. Current Tribal Authority

In July 1998 the Southern Ute Indian Tribe applied for TAS seeking approval to administer a CAA title V air quality operating permit program throughout the Reservation. The State of Colorado challenged the Tribe's CAA TAS application, asserting that the Act of May 21, 1984, Public Law 98–290, 25 U.S.C. 668, which defined the boundaries of the Reservation, established the State's jurisdiction to regulate non-Indian-owned air pollution sources located on fee lands within the Reservation. The Tribe and the State, while continuing to disagree over who has jurisdiction over these sources, formed the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission), and executed an intergovernmental agreement (IGA) on December 13, 1999, to establish a single air quality program applicable to all lands within the exterior boundaries of the Reservation.

In general, the IGA allows for the Tribe to implement and administer CAA programs, on a Reservation-wide basis, through the joint Commission. It also provides that the State will support the Tribe's CAA TAS application as long as it is consistent with the IGA. Congress then passed the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004, Public Law 108–336 on October 18, 2004, which codifies the basic framework of the IGA, and authorizes EPA to grant TAS authority to the Tribe for air programs submitted under CAA section 301(d). The Tribe has previously received TAS approval on April 26, 2000, for the purposes of grant funding under CAA Section 105.

On January 20, 2009, the Tribe submitted its CAA TAS application together with the Tribe's initial Title V Program. On July 14, 2009, EPA found the Tribe's CAA program TAS application to be administratively complete. This means the Tribe's CAA program TAS application contains the basic information needed for EPA to make a TAS eligibility determination.

On March 2, 2012, EPA issued its determination finding that the Tribe is eligible for TAS for the purposes of approval of the title V program.

B. Reasonably Severable Title V Program Elements

As previously discussed in Section I above, the TAR allows for Indian tribes to seek approval of partial elements of CAA programs as long as those portions are determined to be reasonably severable elements, that is, not integrally related to program elements

that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements. 40 CFR 49.7(c). Each submittal is evaluated for adequacy by EPA on a case-by-case basis.

In the March 9, 2011 proposed interim approval, we stated that the underlying Federal regulations at CAA sections 111 (Standards of Performance for New Stationary Sources), 112 (National Emissions Standards for Hazardous Air Pollutants) and the Acid Rain Program at title IV of the CAA were reasonably severable elements of a title V program. At that time, the Region's view was that the authority to implement and enforce these regulations independent of title V, as contrasted with the authority to include the requirements that apply to a particular source in that source's title V permit and to enforce those requirements, is a necessary part of an approvable title V program.

After careful consideration, we find that, where, as is the case here, the title V permitting authority has the ability to include all applicable requirements in a title V permit and to enforce all requirements of a permit, the authority to implement CAA sections 111 and 112 as well as the Acid Rain Program directly (i.e., independently of title V) is not a necessary element of an approvable title V program and therefore does not require severing pursuant to 40 CFR 49.7(c). While we believe that it is convenient in a number of respects for a permitting authority to have the authority to implement and enforce the Acid Rain Program and other underlying regulations outside of the context of an approved title V program, we are not, at this juncture, concluding that such authority is a necessary element of an approvable title V program.

Thus, it is not necessary to sever these CAA requirements in the context of approving the Tribe's Title V Program.[1] Nevertheless, we note that the Tribe has submitted a letter to EPA expressing its intent to incorporate CAA section 111 and 112 requirements into the Reservation Air Code and pursue authorization from EPA to implement and enforce those CAA programs.

C. Criminal Enforcement Memorandum of Agreement

The TAR provides for a Federal role in criminal enforcement of a program when the CAA or its implementing regulations mandate criminal enforcement authority and the applicant tribe is precluded from exercising such authority. 40 CFR 49.7(a)(6) and 49.8. In these circumstances, the TAR allows EPA to approve a tribal application if the tribe enters into a Memorandum of Agreement (MOA) with EPA that provides for the Federal government to exercise primary criminal enforcement responsibility. *Id.* These provisions of the TAR recognize that Federal law places certain limitations on tribal criminal jurisdiction and sanctions. In this instance, the IGA reached between the Tribe and the State of Colorado contemplates that EPA will exercise criminal enforcement within the Reservation boundary for air pollution violations.

On this basis, on February 10, 2009, the Tribe and EPA entered into a MOA which provides a procedure by which the Tribe will supply potential investigative leads to the Federal government in an appropriate and timely manner when the Tribe is precluded from asserting criminal enforcement authority.

IV. Evaluations of the Tribe's Title V Program Elements

EPA conducted a thorough review of the Tribe's Title V Program original and subsequent supplemental applications (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009; *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010; *Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012) according to 40 CFR 70.4(b) *Elements of the initial program submission.* Upon review of those applications, EPA concluded that the 16 elements found at 40 CFR 70.4(b) were adequately addressed by the Tribe's Title V Program.

A. Summary of EPA's March 9, 2011 Proposed Interim Approval of the Tribe's Title V Program

The Southern Ute Indian Tribe submitted an initial and a supplemental Title V Program to EPA on January 20, 2009 and September 28, 2010 respectively. The Title V Program submittals include a legal opinion from the Tribe's legal counsel stating that the laws of the Tribe and Southern Ute Indian Tribe/State of Colorado Environmental Commission provide adequate legal authority to carry out all aspects of the Title V Program, and a description of how the Tribe intends to implement the Title V Program.

EPA comments noting deficiencies in the Tribe's initial January 20, 2009 Title V Program submittal were sent to the Tribe in a letter dated December 23, 2009. The deficiencies were segregated into those that require corrective action prior to Title V Program approval, and those that, if addressed, would serve to strengthen the Title V Program, but were not necessary for approval.

In the September 28, 2010 supplemental Title V Program application, the Tribe addressed the deficiencies that required corrective action prior to Title V Program approval as well as those that served to strengthen the Title V Program. EPA reviewed these changes and determined that they were adequate to allow for Title V Program interim approval pursuant to 40 CFR 70.4(a).

The EPA's March 9, 2011 proposed interim approval **Federal Register** notice outlined two changes to the Tribe's Program to be made in order for a final full approval to be granted. Those two changes were:

- Modify the ''emission unit'' definition to include pollutants listed under 112(b) of the Act; and
- Modify the ''major source'' definition to include the updated definition for purposes of regulating greenhouses gases as part of the Prevention of Significant Deterioration/ Title V Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). *See* 75 FR 106 at 31514–31608 (June 3, 2010).

Since the publishing of the March 9, 2011 proposed interim approval in the **Federal Register**, the Tribe has made the recommended changes above to its Program and resubmitted the Title V Program to the EPA (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012). Thus, the Title V Program meets the minimum requirements of 40 CFR 70.4(b).

B. Analysis of the Tribe's Title V Program Submission per 40 CFR 70.4(b)

1. Complete Title V Program Description

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(1). The Tribe submitted a complete program description (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 1, Program Description) which describes how the Tribe intends to carry out its responsibilities under part 70.

[1] If direct implementation authority for CAA sections 111 and 112 and the Acid Rain Program was a necessary element of an approvable title V program, EPA would find each of these authorities to be a severable element of such a program.

2. Regulations Comprising the Title V Program

The Tribe's Title V Program, with the operating permit regulations (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code, Articles I and II), meets the requirements of 40 CFR 70.4(b)(2) including evidence of procedurally correct adoption of the Tribe's Reservation Air Code as well as public notice and comments on its adoption. The Tribe's Title V Program satisfies the requirements outlined in 40 CFR 70.4 and all other relevant sections of part 70.

3. Legal Opinion

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(3). The Tribe's independent legal counsel, Maynes, Bradford, Shipps & Sheftel, LLP Attorneys at Law, submitted an initial and a supplemental legal opinion in both the initial and supplemental Title V Program applications (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009 and *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010). The signatory of the legal opinion, the Tribe's legal counsel, Sam Maynes of Maynes, Bradford, Shipps & Sheftel, LLP Attorneys at Law, has full authority to independently represent the Tribe in court on all matters pertaining to the Tribe's Title V Program. The legal opinion includes a demonstration of adequate legal authority to carry out the requirements of part 70, including authority to carry out those activities listed at 40 CFR 70.4(b)(3)(i) through (xiii).

EPA notes that the Tribe's program provides for appropriate review of final permit actions, consistent with 40 CFR § 70.4(b)(3)(x), by providing that final permit actions of the Commission are reviewable in the United States Court of Appeals for the Tenth Circuit. *See* Pub. L. 108–336; Resolution No. 2008–01 dated January 31, 2008, Procedural Rules of the Southern Ute Indian Tribe/State of Colorado Environmental Commission, Section V. C.; *see also* 63 FR at 7261–62.

4. Relevant Title V Program Documentation

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(4). The Tribe submitted extensive application forms (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 4, Program Forms) for review as well as comprehensive instructions for each form.

5. Compliance Tracking

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(5). The Tribe submitted multiple compliance assurance procedures and guidelines (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 5, Compliance Tracking).

6. Application Completeness Determination

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(6). The Tribe's Reservation Air Code (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code) Article II, Sections 2–106(3) and 2–107(1)(a) demonstrates adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of its submittal, except for initial permit applications, for which the part 70 permitting authority may take up to 3 years from the effective date of the Title V Program to take final action on the application, consistent with 40 CFR 70.4(b)(11)(ii).

7. Fee Demonstration

The Tribe's Title V Program includes a fee accounting, which includes projected fee collection and programmatic costs (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 10 Revised Fee Demonstration Figure 1 page 6 and Table 2 page 7) that set fees above the presumptive minimum set forth in section 70.9.

The Tribe's Title V Program requires that part 70 sources pay $50 per ton of fee pollutant (not including greenhouse gases (GHGs)) for the first year of permit issuance and then $50 per ton plus any percentage increase necessary to reflect any increase in the Consumer Price Index (CPI) each year thereafter. The Tribe has adequately shown in the Fee Demonstration, that $50 per ton is sufficient to cover the permit program costs and that any fees generated will be used exclusively for permit program costs. The $50 per ton is a slight increase from the current annual part 71 fees, $47.11 per ton. EPA notes that although the Tribe's Title V Program does not assess fees for GHGs, the fee structure is expected to be adequate to cover all program costs, provided that GHG sources below the threshold of 40 CFR part 70 are not subject to the program. The Tribe will review resource needs for GHG-emitting sources in its fee structure if necessary and EPA will work with the Tribe if it requests assistance in establishing title V fees related to GHG emissions.

8. Statement of Adequate Personnel

The Tribe submitted a statement that adequate personnel and funding have been made available to develop, administer, and enforce the Title V Program (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 10, 40 CFR 70.4(b)(8)). This demonstration, however, does not include permit issuance to GHG sources at 100 tpy. In addition, the Tribe has provided a supplemental staffing plan (January 4, 2011 email from Brenda Jarrell) that outlines a staff of six individuals. Those staff resumes can be found in Tab 11 of the *Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program.*

EPA has reviewed the Tribe's statement and staffing plan and concludes they are adequate. EPA notes that the Tribe's Title V Program does not cover sources below the threshold of 40 CFR part 70 (i.e., only those sources that emit at least 100 tpy on a mass basis and 100,000 tpy on a Carbon Dioxide equivalent (CO_2e) [2] basis will be treated as a major source subject to title V permitting as a result of GHG emissions). Accordingly, applicability of the Tribe's Title V Program is consistent with GHG permitting requirements. *See* 75 FR 82254 (December 30, 2010) (Title V GHG Narrowing Rule). We conclude that the Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(8).

9. Submission Commitment

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(9). The Tribe submitted a commitment

[2] CO_2e is a measure of the global warming potential of GHGs. Pursuant to the GHG Tailoring Rule, Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials (74 FR 56395) should be used in calculating CO_2e for purposes of determining whether a source's emissions exceed the major source threshold for title V. See *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,* 75 FR 31522.

(*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 9, 40 CFR 70.4(b)(9)) to submit, at least annually to the Administrator, information regarding the Tribe's enforcement activities including, but not limited to, the number of civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.

10. Failure To Issue Permit in a Timely Manner

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(10). The relevant provisions of the Tribe's Reservation Air Code (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code) Article II, Sections 2–106 and 2–107 are consistent with requirements outlined in 40 CFR 70.5(a)(2) and 70.6(f).

11. Transition Plan

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(11). The Tribe's comprehensive Revised Transition Plan (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 9, Revised Transition Plan) outlines a plan and schedule for submittal and final action on initial permit applications for all part 70 (previously part 71) sources within the exterior boundaries of the Reservation.

Currently, EPA Region 8 has issued 44 part 71 permits on the Southern Ute Indian Reservation. Transfer of primary responsibility for permits is outlined in the Tribe's Revised Transition Plan. According to the Tribe's Code, this Title V Program ''shall become effective upon the date of the approval by the Administrator of the Tribe's application for treatment as a state and part 70 program approval.'' (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code, Article II, Part I, 2–102).

Thus, upon signature of this **Federal Register** notice and the separate TAS application, the Tribe will begin the process of contacting all part 71 sources and informing them of when each source is expected to submit a part 70 permit application per the Tribe's transition plan (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 9, Revised Transition Plan).

12. Off Permit Changes

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(12). The Tribe's Reservation Air Code (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code) contains provisions, Article II, Sections 2–110, 2–111 and 2–116, allowing for changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the part 70 permit, provided the facility provides written notification as required in section 70.4(b)(12) consistent with 40 CFR 70.4(b)(12)(i) through (iii).

13. Expeditious Permit Revisions and/or Modifications Review

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(13). The Tribe's Reservation Air Code (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code) Article II, Section 2–111 provides for adequate, streamlined and reasonable procedures for expedited review of permit revisions or modifications.

14. Tribe Only Revisions

The Tribe's Title V Program does not allow changes that are not addressed or that are prohibited as described in 40 CFR 70.4(b)(14). Thus, this section does not apply to the Tribe's Title V Program.

15. Permit Changes Subject to Title I and IV of the Act

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(15). The Tribe's Reservation Air Code (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code) Article II, Section 2–116(2) prohibits sources from making, without a permit revision, changes that are not addressed or that are prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

16. Permit Content and Permit Issuance, Renewal, Re-openings and Revisions

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(16). The Tribe's Reservation Air Code (*Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* dated January 30, 2012, Tab 6, Reservation Air Code) Article II, Sections 2–107, 2–110 and 2–112 requires the Tribe's Title V Program to implement the requirements of 40 CFR 70.6 and 70.7.

V. What action is EPA taking today?

EPA is promulgating a full approval rather than a full interim approval because the issues identified in the proposed interim approval have been addressed. Thus, the EPA is moving to a full approval in today's action.

The Title V Program issues identified in the EPA's March 9, 2011 proposed interim approval were addressed. The Tribe's updated RAC became effective on August 8, 2011. An *Application for Full Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permits Program* was submitted to the EPA on January 30, 2012 for final action. The following changes were made to the Tribe's Title V Program, effective August 8, 2011:

(1) The ''emission unit'' definition in the RAC (found at RAC Section 1–103(26)) was modified to include pollutants listed under section 112(b) of the CAA (42 U.S.C. 7412(b));

(2) The ''major source'' definition in the RAC (found at RAC Section 1–103(38)) was modified to include the code of Federal regulations' updated definitions of ''major source'' and ''subject to regulation'' (found at RAC Section 1–103(65)) for purposes of addressing greenhouse gases as part of EPA's Prevention of Signification Deterioration/Title V Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). *See* 75 FR 106 at 31514–31608 (June 3, 2010).

The change to the ''emission unit'' definition clarified and made the Tribe's Title V Program consistent with 40 CFR part 70. Although the Tribe has the authority to regulate pollutants listed under 112(b) of the Act through its ''major source'' and ''regulated air pollutant'' definitions, to be consistent, the ''emission unit'' definition should include 112(b) pollutants as well.

The change to the ''major source'' definition narrowed the number of sources requiring Title V review for greenhouse gases (GHGs) after July 1, 2011, by raising the major source threshold from 100 tons per year (tpy) to 100,000 tpy for GHGs. With this modification, the Tribe will be issuing Title V operating permits to sources with GHG emissions in a manner consistent with the Federal regulations as set out in the GHG Tailoring Rule.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden. The information collection requirements in the Title V Program are all mandated by 40 CFR part 70. The Office of Management and Budget (OMB) previously approved the information collection requirements specified in 40 CFR part 70 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0243. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the *Administrative Procedure Act,* or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impact of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

EPA's action in approving the Tribe's Title V Program does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Thus, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Title V Program primarily affects private industry and does not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action will have tribal implications in that it will result in responsibility for issuing title V permits being transferred from EPA to the Tribe in that it will result in responsibility for issuing title V permits being transferred from EPA to the Tribe. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. EPA's action in approving the Title V Program will make the requirements of the Title V Program enforceable under Federal law.

EPA consulted with tribal officials early in the process of developing this action to permit them to have meaningful and timely input into its development. Government to Government consultation occurred on November 3, 2010 between Region 8 Administrator, James B. Martin and then Chairman Matthew Box. Additionally, routine staff level conference calls and meetings have been held consistently throughout the review process.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it approves the Title V Program submitted by the Southern Ute Indian Tribe and thus does not concern health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final action approves the Title V Program submitted by the Southern Ute Indian Tribe and thus transfers responsibility for issuing title V permits from EPA to the Tribe.

K. Congressional Review Act (CRA)

The CRA, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective upon approval by the Region 8 Administrator.

Dated: March 7, 2012.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. sections 7401, *et seq.*

■ 2. In appendix A to part 70, in alphabetical order (after South Dakota and before Tennessee), add the entry for Southern Ute Indian Tribe to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Southern Ute Indian Tribe

(a) The Southern Ute Indian Tribe submitted an operating permits program on January 20, 2009 with supplements on September 28, 2010 and January 30, 2012; full approval effective on March 2, 2012.

(b) [Reserved].

* * * * *

[FR Doc. 2012–6205 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2012–0054; FRL–9647–7]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Oklahoma has applied to the EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Oklahoma's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on May 14, 2012 unless the EPA receives adverse written comment by April 16, 2012. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: patterson.alima@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov,* or email. The Federal *regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, and Email address *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program

that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that Oklahoma's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma Final authorization to operate its hazardous waste program with the changes described in the authorization application. Oklahoma has responsibility for permitting treatment, storage, and disposal facilities within its borders. Also section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (''SAFETEA''), Public Law 109–59, 119 Statute 1144 (August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Oklahoma including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Oklahoma subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action is already effective under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For what has Oklahoma previously been authorized?

Oklahoma initially received final Authorization on January 10, 1985, (49 FR 50362–50363) published December 27, 1984 to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program with publication dates: April 17, 1990 (55 FR 14280–14282), effective June 18, 1990; September 26, 1990 (55 FR 39274) effective November 27, 1990; April 2, 1991 (56 FR 13411–13413) effective June 3, 1991; September 20, 1991 (56 FR 47675–47677) effective November 19, 1991; September 29, 1993 (58 FR 50854–50856) effective November 29, 1993; October 12, 1993 (58 FR 52679–52682) effective December 13, 1993; October 7, 1994 (59 FR 51116–51122) effective December 21, 1994; January 11, 1995 (60 FR 2699–2702) effective April 27, 1995; October 9, 1996 (61 FR 52884–52886) effective December 23, 1996; Technical Correction March 14, 1997 (62 FR 12100–12101) effective March 14, 1997; September 22, 1998 (63 FR 50528–50531) effective November 23, 1998; March 29, 2000 (65 FR 16528–16532) effective May 30, 2000; May 10, 2000 (65 FR 29981–29985) effective June 10, 2000; January 2, 2001 (66 FR 28–33) effective March 5, 2001; April 9, 2003 (68 FR 17308–17311) effective June 9, 2003 and February 4, 2009 (74 FR 5994–6001). The authorized Oklahoma RCRA program was incorporated by reference into the CFR published on December 9, 1998 (63 FR 67800–67834) effective February 8, 1999, August 26, 1999 (64 FR 46567–46571) effective October 25, 1999, August 27, 2003 (68 FR 51488–51492) effective October 27, 2003, August 27, 2010 (75 FR 36546) June 28, 2010 and (66 FR 18927–18930) effective June 6, 2011. On December 20, 2011, Oklahoma submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The Oklahoma Hazardous Waste Management Act (''OHWMA'') provides the ODEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of RCRA Cluster XX, and designates the ODEQ as the State agency to cooperate and share information with EPA for the purpose of hazardous waste regulation. The Oklahoma Environmental Quality Code (''Code''), at 27 A O.S. Section 2–7101 *et seq.* establishes the statutory authority to administer the Hazardous waste management program and subtitle C. The State regulations to manage the Hazardous waste management program are at Oklahoma Administrative Code (OAC) Title 252 Chapter 205.

The DEQ adopted applicable Federal hazardous waste regulations as amended through July 1, 2011. The provisions for which the State of Oklahoma is seeking authorization are documented in the *Regulatory Documentation For Federal Provisions For Which The State Of Oklahoma Is*

Seeking Authorization, Federal Final Rules Published Between July 1, 2009 Through June 30, 2010 RCRA Cluster XX, prepared on April 22, 2011.

The DEQ incorporates the Federal regulations by reference and there have been no changes in State or Federal laws or regulations that have diminished the DEQ's ability to adopt the Federal regulations by reference as set forth in the authorizations at 75 FR 1236–1262, 75 FR 12989–13009, 75 FR 31716–31717 and 75 FR 33712–33724 for RCRA Cluster XX. The Federal Hazardous waste regulations are adopted by reference by the DEQ at OAC 252:205, Subchapter 3. The DEQ does not adopt Federal regulations prospectively.

The State Hazardous waste management program (''State Program'') now has in place the statutory authority and regulations for all required components of Checklists 222, 223, and 224 in Cluster XX. These statutory and regulatory provisions were developed to ensure the State program is equivalent to, consistent with and no less stringent than the Federal Hazardous waste management program.

The Environmental Quality Act, at 27A O.S. Section 1–3–101(E), grants the Oklahoma Corporation Commission (''OCC'') authority to regulate certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms, as well as underground storage tanks. To clarify areas of environmental jurisdiction, the ODEQ and OCC developed an ODEQ/OCC Jurisdictional Guidance Document to identify respective areas of jurisdiction. The current ODEQ/OCC jurisdictional Guidance Document was amended and signed on January 27, 1999. The revisions to the State Program necessary to administer Cluster XX will not affect the jurisdictional authorities of the ODEQ or OCC.

The Board adopted RCRA Cluster XX amendments on November 16, 2010 and became effective on July 1, 2011. The rules were also codified at OAC 252:205 *et seq.,* Subchapter 3.

Pursuant to OAC 252:205–3–2, the State's incorporation of Federal regulations does not incorporate prospectively future changes to the incorporated sections of the 40 CFR, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated-by-reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the Federal provisions. Thus, OAC Title 252, Chapter 205 provides equivalent and no less stringent authority than the Federal Subtitle C program in effect July 1, 2011. The State of Oklahoma incorporate by reference the provisions of 40 Code of Federal Regulations (CFR) parts 124 of 40 CFR that are required by 40 CFR 271.14 (with the addition of 40 CFR 124.19(a) through (c), 124.19(e), 124.31, 124.32, 124.33 and Subpart G); 40 CFR parts 260–268 [with the exception of 260.21, 262 Subparts E and H, 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(1), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f) 265.1080(e), 265.1080(f), 265.1080(g), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g)]; 40 CFR part 270 [with the exception of 270.1(c)(2) (ix and 270.14(b)(18)]; 40 CFR part 273; and 40 CFR part 279.

The DEQ is the lead Department to cooperate and share information with the EPA for purpose of hazardous waste regulation.

Pursuant to 27A O.S. Section 2–7–104, the Executive Director has created the Land Protection Division (LPD) to be responsible for implementing the State Program. The LPD is staffed with personnel that have the technical background and expertise to effectively implement the provisions of the State program subtitle C Hazardous waste management program.

G. What changes are we approving with today's action?

On December 20, 2011, the State of Oklahoma submitted final complete program applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action that the State of Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The State of Oklahoma revisions consist of regulations which specifically govern Federal Hazardous waste revisions promulgated from July 1, 2009 through June 31, 2010 (RCRA Cluster XX). Oklahoma requirements are included in a chart with this document.

Description of federal requirement (include checklist number, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority	Analogous state authority
1. OECD Requirement; Export Shipments of Spend Lead-Acid Batteries. (Checklist 222).	75 FR 1236–1262 January 8, 2010	Oklahoma Statutes Title 27A Section 2–7–101 *et seq.;* Oklahoma Administrative Code amended November 16, 2010. Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2011.
2. Hazardous Waste Technical Corrections and Clarification. (Checklist 223).	75 FR 12989–13009, 75 FR 31716–31717 March 18, 2010, and June 4, 2010.	Oklahoma Statutes Title 27A Section 2–7–101 *et seq.;* Oklahoma Administrative Code amended November 16, 2010. Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2011.
3. Withdrawal of the Emission Comparable Fuel Exclusion. (Checklist 224).	75 FR 33712–33724 June 15, 2010	Oklahoma Statutes Title 27A Section 2–7–101 *et seq.;* Oklahoma Administrative Code amended November 16, 2010. Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2011.

H. Where are the revised State rules different from the Federal rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who handles permits after the authorization takes effect?

Oklahoma will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the

Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

J. How does today's action affect Indian Country (8 U.S.C. 1151) in Oklahoma?

Section 8 U.S.C. 1151 does not affect the State of Oklahoma because under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (''SAFETEA''), Public Law 109–59, 119 Statute 1144 (August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

K. What is codification and is the EPA codifying Oklahoma's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart LL for this authorization of Oklahoma's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this Federal Register notice.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821, January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective May 14, 2012.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 7, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–6275 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1993–0001, EPA–HQ–SFUND–2011–0064, 0068, 0646, 0648, 0649, 0650, 0651, and 0652; FRL–9647–3]

RIN 2050–AD75

National Priorities List, Final Rule No. 53

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or

contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds nine sites to the General Superfund Section of the NPL.

DATES: *Effective date:* The effective date for this amendment to the NCP is April 16, 2012.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is

of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund Section'') and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of

property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm*

J. What is the sitewide ready for anticipated use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I review the documents relevant to this Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/County, State	Docket ID No.
Continental Cleaners	Miami, FL	EPA–HQ–SFUND–2011–0646.
Sauer Dump	Dundalk, MD	EPA–HQ–SFUND–2011–0064.
Compass Plaza Well TCE	Rogersville, MO	EPA–HQ–SFUND–2011–0648.
Chemfax, Inc.	Gulfport, MS	EPA–HQ–SFUND–1993–0001.
Southeastern Wood Preserving	Canton, MS	EPA–HQ–SFUND–2011–0649.
CTS of Asheville, Inc.	Asheville, NC	EPA–HQ–SFUND–2011–0068.
Eighteenmile Creek	Niagara County, NY	EPA–HQ–SFUND–2011–0650.
Metro Container Corporation	Trainer, PA	EPA–HQ–SFUND–2011–0651.
Corozal Well	Corozal, PR	EPA–HQ–SFUND–2011–0652.

B. What documents are available for review at the headquarters docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or the EPA listing policies that affect the site and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes the EPA's responses to comments.

C. What documents are available for review at the regional dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes the EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket

Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100; Boston, MA 02109–3912; 617/918–1417.

Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mail Code 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mail Code 9T25, Atlanta, GA 30303; 404/562–8862.

Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mail Code 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mail Code SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail Code 8EPR–B, Denver, CO 80202–1129; 303/312–6484.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mail Code SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Code ECL–112, Seattle, WA 98101; 206/463–1349.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/index.htm* or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following nine sites to the NPL, all to the General Superfund Section. All of the sites included in this final rulemaking are being added to the NPL based on HRS scores of 28.50 or above. The sites are presented in the table below:

State	Site name	City/County
FL	Continental Cleaners	Miami.
MD	Sauer Dump	Dundalk.
MO	Compass Plaza Well TCE	Rogersville.
MS	Chemfax, Inc	Gulfport.
MS	Southeastern Wood Preserving	Canton.
NC	CTS of Asheville, Inc	Asheville.
NY	Eighteenmile Creek	Niagara County.
PR	Corozal Well	Corozal.
PA	Metro Container Corporation	Trainer.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds nine sites to the NPL.

Five sites received no comments: Corozal Well (PR); Metro Container Corporation (PA); Continental Cleaners (FL); Southeastern Wood Preserving (MS); and Compass Plaza Well TCE (MO).

Four sites being placed on the NPL received comments specifically related to the HRS score and these are being addressed in response to comment support documents available concurrent with this final rule: Eighteenmile Creek (NY); Sauer Dump (MD); Chemfax, Inc. (MS); and CTS of Asheville, Inc. (NC).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this Final Rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* the EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this Final Rule?

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this Final Rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to states or other levels of government.

Thus, the requirements of the Executive Order do not apply to this final rule.

The EPA believes, however, that this final rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the Governor or a state official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this Final Rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355 (May 22, 2001)), requires Federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this Final Rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this Final Rule?

No. This rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this Rule?

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has the EPA submitted this Rule to Congress and the Government Accountability Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the effective date of this Final Rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect, the Federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded Federal requirements imposed on state and local governments and the private sector) and any other relevant information or requirements and any relevant Executive Orders.

The EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that the EPA necessarily will undertake remedial action, nor does it require any action by any party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this Rule?

Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (DC Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 8, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to Part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [a]
* * *	* *	*	*
FL	Continental Cleaners	Miami.	
* * *	* *	*	*
MD	Sauer Dump	Dundalk.	
* * *	* *	*	*
MO	Compass Plaza Well TCE	Rogersville.	
* * *	* *	*	*
MS	Chemfax, Inc.	Gulfport.	
* * *	* *	*	*
MS	Southeastern Wood Preserving	Canton.	
* * *	* *	*	*
NC	CTS of Asheville, Inc.	Asheville.	

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/County	Notes [a]
* * *	* * *	* *	*
NY	Eighteenmile Creek	Niagara County.	
* * *	* * *	* *	*
PA	Metro Container Corporation	Trainer.	
* * *	* * *	* *	*
PR	Corozal Well	Corozal.	
* * *	* * *	* *	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be greater than or equal to 28.50).
S = State top priority (HRS score need not be greater than or equal to 28.50).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2012–6329 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XB076

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector of the coastal migratory pelagic fishery for king mackerel in the Florida east coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, March 14, 2012, through 12:01 a.m., local time, April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727–824–5305, email *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg)(50 CFR 622.42(c)(1)(i)(A)(*1*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined the commercial quota for Gulf group king mackerel in the Florida east coast subzone will be reached by March 14, 2012. Accordingly, the commercial sector for Gulf group king mackerel in the east coast subzone is closed effective 12:01 a.m., local time, March 14, 2012, through March 31, 2012, the end of the fishing year.

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25′ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close this component of the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 2012.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–6290 Filed 3–12–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 51
Thursday, March 15, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1070

[Docket No. CFPB–2012–0010]

RIN 3170–AA20

Confidential Treatment of Privileged Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is publishing for notice and comment proposed amendments to 12 CFR part 1070, subpart D, its rules relating to the confidential treatment of information obtained from persons in connection with its exercise of authorities under Federal consumer financial law. The proposed amendments will add a new section to these rules providing that the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes will not waive or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to any other person or entity. In addition, the Bureau is proposing to readopt 12 CFR 1070.47(c) in modified form to provide that the Bureau's provision of privileged information to another Federal or State agency does not waive any applicable privilege, whether the privilege belongs to the Bureau or any other person.

DATES: Written comments must be received on or before April 16, 2012.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. You may submit comments by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov*. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Submit only information that you wish to make available publicly. Do not include sensitive personal information, such as account numbers or Social Security numbers. Comments will not be edited to remove any identifying or contact information, such as name and address information, email addresses, or telephone numbers.

FOR FURTHER INFORMATION CONTACT: John R. Coleman, Senior Litigation Counsel at (202) 435–7254, Office of General Counsel, Consumer Financial Protection Bureau.

SUPPLEMENTARY INFORMATION:

I. Background

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Bureau as an independent agency within the Federal Reserve System responsible for regulating the offering and provision of consumer financial products and services under the Federal consumer financial laws.[1] On July 21, 2011, the Bureau assumed the authority to supervise insured depository institutions and credit unions with total assets of more than $10,000,000,000, as well as their affiliates and service providers, for compliance with Federal consumer financial law and other related purposes.[2] This supervisory authority transferred to the Bureau from the prudential regulators, and all ''powers and duties'' of the prudential regulators ''relating'' to this transferred authority were granted to the Bureau.[3] Congress also provided the Bureau with nearly identical authority to supervise certain nondepository institutions.[4] The entities subject to the Bureau's supervisory authority are referred to herein as ''supervised entities.''

In exercising its supervisory authority, the Bureau will at times request from its supervised entities information that may be subject to one or more statutory or common law privileges, including, for example, the attorney-client privilege and attorney work product protection. The prudential regulators have taken the position that a supervised institution's submission of privileged information to its regulator does not waive any applicable privilege with respect to any third person, a position Congress codified in 2006 through amendments to the National Credit Union Act and the Federal Deposit Insurance Act.[5]

The Dodd-Frank Act does not explicitly address whether the submission of privileged information to the Bureau in the course of the Bureau's supervisory or regulatory processes will affect any privilege a supervised entity may claim with respect to such

[1] *See* Public Law 111–203, section 1011(a) (2010).

[2] *See* Dodd-Frank Act § 1025(b)(1), (d), 12 U.S.C. 5515(b)(1), (d); *see also* Dodd-Frank Act § 1029A, 12 U.S.C. 5511 note (stating that this provision becomes effective on the designated transfer date, established by the Secretary of the Treasury as July 21, 2011). The Bureau also has certain supervisory authorities with respect to other depository institutions and credit unions, as well as the service providers to a substantial number of such institutions. *See* Dodd-Frank Act § 1026(b), (c), (e), 12 U.S.C. 5516(b), (c), (e).

[3] *See* Dodd-Frank Act § 1061, 12 U.S.C. 5581. The prudential regulators are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the former Office of Thrift Supervision (OTS). *See* Dodd-Frank Act § 1002(24), 12 U.S.C. 5481(24).

[4] *See* Dodd-Frank Act § 1024(b), 12 U.S.C. 5514(b). The Bureau also has supervisory authority over service providers to such institutions. *See* Dodd-Frank Act § 1024(e), 12 U.S.C. 5514(e).

[5] *See* Financial Services Regulatory Relief Act of 2006 (FSRRA), Public Law 109–351, § 607 (2006), codified at 12 U.S.C. 1785(j), 1828(x).

information. Congress, however, did provide that all the powers and duties of the prudential regulators relating to their transferred consumer financial protection functions would be granted to the Bureau, and this grant of authority encompasses the ability to receive privileged information from supervised entities without effecting a waiver. Moreover, Congress delegated authority to the Bureau to ''prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.'' [6] Pursuant to this and other rulemaking authority, including the authority to prescribe rules it determines are ''necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof,'' [7] the Bureau proposes to promulgate a rule providing that a person's submission of information to the Bureau in the course of its supervisory or regulatory processes does not thereby waive any privilege the person may claim with respect to such information as to any person other than the Bureau.

On July 28, 2011, the Bureau issued a rule providing that ''[t]he provision by the CFPB of any confidential information pursuant to [12 CFR part 1070, subpart D] does not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under federal law.'' 12 CFR 1070.47(c). The Bureau proposes to readopt this rule in modified form to clarify that it is intended to be a rule with the force and effect of law and to provide the public with an additional opportunity to comment upon the rule and the Bureau's rationale for issuing the rule. The Bureau is in the process of reviewing comments received on the interim final rule that is codified at 12 CFR part 1070, and intends to issue a final rule in response to those comments.

II. Summary of Proposed Rule

A. Addition of 12 CFR 1070.48

The Bureau proposes to add the following new section to its rules governing the confidential treatment of information:

§ 1070.48 Privileges not affected by disclosure to the CFPB.

(a) *In General.* The submission by any person of any information to the CFPB for any purpose in the course of any supervisory or regulatory process of the CFPB shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the CFPB.

(b) *Rule of Construction.* Paragraph (a) shall not be construed as implying or establishing that—

(1) Any person waives any privilege applicable to information that is submitted or transferred under circumstances to which paragraph (a) does not apply; or

(2) Any person would waive any privilege applicable to any information by submitting the information to the Bureau but for this section.

This rule is substantively identical to the statutory provisions that apply to the submission of privileged information to the prudential regulators, State bank and credit union supervisors, and foreign banking authorities in the course of their supervisory or regulatory processes.[8] Once effective, the proposed rule is intended to govern all claims, in Federal and State court, that an entity has waived any applicable privilege by providing information requested by the Bureau pursuant to its supervisory or regulatory authority.

As noted, the Bureau has exclusive authority to supervise depository institutions and credit unions with more than $10,000,000,000 in assets, as well as their affiliates and service providers, for purposes of assessing such institutions' compliance with the requirements of Federal consumer financial law; obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such entities; and detecting and assessing associated risks to consumers and markets for consumer financial products and services.[9] The Bureau believes, based on the historical experience of the prudential regulators and state banking supervisors, and its experience to date, that effective supervision may often require review of supervised entities' privileged information. For example, part of a strong compliance program is self-monitoring for consumer protection issues. Supervised entities often employ inside or outside counsel to conduct analyses regarding whether the entity is in compliance with Federal consumer financial law. The Bureau may require access to these analyses, which may be subject to the attorney-client privilege, to assess effectively the adequacy of supervised entities' compliance with Federal consumer financial law as well as these entities' systems and procedures for compliance with Federal consumer financial law.

The experience of the prudential regulators prior to the enactment of the Financial Services Regulatory Relief Act (FSRRA) also demonstrates the need for the proposed rule. For example, the Office of the Comptroller of the Currency (OCC) has consistently taken the position that the submission of privileged information to its examiners is not ''voluntary'' and therefore does not result in the waiver of any applicable privilege with respect to third parties.[10] Nonetheless, the OCC supported enactment of the statutory ''selective waiver'' provision (codified at 12 U.S.C. 1828(x)) in order to provide greater assurance to its supervised entities that their submission of privileged information to the OCC would not thereby waive any applicable privilege with respect to third parties.[11] According to the OCC, the provision would ''improve [its] ability to obtain information from regulated entities'' and ''significantly enhance the free flow of information between the OCC and the institutions [it] supervise[s].'' [12]

Similarly, although the Bureau believes that supervised entities do not waive any applicable privilege with respect to third parties by providing privileged information to the Bureau,

[6] *See* Dodd-Frank Act § 1022(c)(6)(A), 12 U.S.C. 5512(c)(6)(A). ''Federal consumer financial law'' includes Title X of the Dodd-Frank Act and all rules promulgated thereunder. *See* Dodd-Frank Act § 1002(14), 12 U.S.C. 5481(14).

[7] *See* Dodd-Frank Act § 1022(b)(1), 12 U.S.C. 5512(b)(1).

[8] *See* 12 U.S.C. 1785(j), 1828(x).

[9] *See* Dodd-Frank Act § 1025(b)(1); 12 U.S.C. 5515(b)(1). The Bureau will supervise nondepository supervised entities for the same purposes. *See* Dodd-Frank Act § 1024(b), 12 U.S.C. 5514(b).

[10] *See* OCC Interpretive Letter, 1991 WL 338409 (Dec. 3, 1991); Statement of Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, before the U.S. House Subcommittees on General Oversight and Investigations and on Financial Institutions and Consumer Credit, Committee on Financial Services, on Coordination and Information Sharing among Financial Institution Regulators, 20 No. 2 OCC Q.J. 45, 2001 WL 1002162 (Mar. 6, 2001).

[11] *See* Statement of Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, before the Senate Committee on Banking, Housing and Urban Affairs, Hearing: Consideration of Regulatory Relief Proposals, 2006 WLNR 3558037 (Mar. 1, 2006).

[12] *Id.; see also* Testimony of Donald L. Kohn, Member of the Board of Governors of the Federal Reserve System, before the Senate Committee on Banking, Housing and Urban Affairs, Regulatory Relief—Part 1, 2006 WLNR 3557970 (Mar. 2, 2006) (supporting passage of the selective waiver provision because it would ''[f]acilitate the flow of information during the supervisory process by clarifying that depository institutions and others do not waive any privilege they may have with respect to information when they provide the information to a federal, state, or foreign banking authority as part of the supervisory process.'').

the Bureau proposes issuing 12 CFR 1070.48 to provide greater assurances to supervised entities and thereby facilitate the Bureau's supervisory and regulatory processes. Certain supervised entities have expressed concern that providing privileged information to Bureau supervisory personnel could waive the entities' privilege with respect to third parties. This concern is based on judicial decisions holding that entities have waived the attorney-client privilege or the work product privilege with respect to third parties by providing information outside of the supervisory context to other Federal agencies, primarily the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).[13] In addition, the statutory selective waiver provisions contained in the National Credit Union Act and the Federal Deposit Insurance Act do not explicitly apply to information submitted to the Bureau.[14]

In response to these concerns, on January 4, 2012, the Bureau's General Counsel issued a letter, CFPB Bulletin 12–01, expressing the Bureau's considered view that the submission of privileged information to the Bureau in response to requests made pursuant to the Bureau's supervisory authority does not result in the waiver of any applicable privilege a supervised entity may claim in response to a request or demand for the same information by a third party.[15] In its letter, the Bureau explained that, like the prudential regulators, its supervisory authority encompasses the authority to compel supervised entities to provide privileged information and, therefore, a supervised entity's submission of privileged information to the Bureau in response to a request is not a voluntary disclosure that would result in the waiver of any applicable privilege. Although CFPB Bulletin 12–01 was addressed to the Bureau's supervision of large depository institutions and credit unions and their affiliates, the same reasoning applies to the Bureau's supervisory authority over other entities. Courts have affirmed this view, rejecting claims that supervised entities have waived applicable privileges by providing information to their supervisors.[16]

Further, when Congress transferred to the Bureau the prudential regulators' authority to conduct examinations to assess compliance with Federal consumer financial law by large depository institutions and credit unions and their affiliates, it also granted to the Bureau ''all powers and duties * * * relating'' to those transferred authorities.[17] This broad grant of authority provides the Bureau with supervisory authority equivalent to that of the prudential regulators, which includes the authority to request and receive information without effecting a waiver of any privilege a supervised entity may claim with respect to that information in response to a request or demand by a third party.

This conclusion is consistent with the coordinated scheme of supervision established by Title X of the Dodd-Frank Act. The prudential regulators and the Bureau share responsibility for supervising large depository institutions and credit unions and are required to coordinate their examinations and consult regarding draft reports of examination.[18] As noted, a supervised entity's submission of privileged information to a prudential regulator does not waive the privilege with respect to third parties.[19] In addition, a prudential regulator's provision of a supervised entity's privileged information to the Bureau does not waive ''any privilege applicable to [the] information.'' [20] It would be incongruous for Congress to provide a mechanism whereby a person could pass privileged information through a prudential regulator to the Bureau without waiving any applicable privilege, but could not provide the information directly to the Bureau without waiving the privilege.

Furthermore, the prudential regulators retain primary responsibility for supervising smaller depository institutions and credit unions for compliance with Federal consumer financial law.[21] A central purpose of Title X of the Dodd-Frank Act was to enhance the supervision of all entities for compliance with Federal consumer financial law and to ensure that Federal consumer financial law is enforced consistently.[22] These goals would be undermined if a supervised entity's ability to provide privileged information to supervisory personnel without risking a waiver were to depend upon the entity's size.

Statutes should be construed as a coherent whole and in a manner consistent with their purpose. Accordingly, the Bureau construes its examination authority to be equivalent to that of the prudential regulators in this respect, and continues to adhere to the position that the submission of privileged information in response to requests made pursuant to the Bureau's examination authority does not result in a waiver of any privilege with respect to third parties. Nonetheless, in order to

[13] *See, e.g., In re Qwest Commc'ns Int'l, Inc.,* 450 F.3d 1179 (10th Cir. 2006) (holding that providing information to DOJ and the SEC in the course of their investigation waived the protections of the attorney-client privilege and work product doctrine applicable to that information); *In re Columbia Healthcare Corp. Billing Practices Litig.,* 293 F.3d 289 (6th Cir. 2002) (holding that providing information to the DOJ pursuant to its investigation of Columbia's billing practices waived any claim that the information was subject to the attorney-client privilege or work product doctrine); *Westinghouse Elec. Corp.* v. *Phillipines,* 951 F.2d 1414 (3d Cir. 1991) (holding that the disclosure of documents to the SEC and the DOJ in order to cooperate with their investigations waived the attorney-client privilege and the work product doctrine with respect to those documents); *but see Diversified Indus., Inc.* v. *Meredith,* 572 F.2d 596 (8th Cir. 1978) (en banc) (holding that providing information to the SEC in the course of its investigation did not result in a waiver of attorney-client privilege with respect to third parties).

[14] *See* 12 U.S.C. 1785(j), 1828(x); *see also* 12 U.S.C. 1813(z) (defining Federal banking agency as the OCC, the Board, and the FDIC).

[15] This letter is available on the Bureau's Web site at *http://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.*

[16] *See. e.g., Boston Auction Co.* v. *W. Farm Credit Bank,* 925 F. Supp. 1478, 1481–82 (D. Hawaii 1996) (no waiver where documents provided to examiners from the Farm Credit Administration because disclosure not voluntary); *Vanguard Sav. & Loan Assn* v. *Banks,* No. 93–cv–4267, 1995 WL 555871, at *5 (E.D.Pa. Sept. 18, 1995) (holding that the disclosure of work product privileged information to state bank regulator is ''involuntary'' and, therefore, does not waive the privilege); *United States* v. *Buco,* Crim. No. 90–10252–H, 1991 WL 82459, at *2 (D. Mass. May 13, 1991) (holding that ''the public interest served by encouraging the free flow of information between the banks and their Federal regulators is substantial; a rule which provided that a bank generally waived its attorney-client privilege as to materials submitted to federal regulators would substantially impair that interest.''). Moreover, in recognition of the need for a frank, informal, and relatively continuous flow of communication between supervisory agencies and the financial institutions they supervise, courts have long held that supervisory agencies do not waive the protections of the bank examination privilege (an offshoot of the deliberative process privilege) by sharing privileged information with their supervised entities. *See Overby* v. *United States Fid. & Guar. Co.,* 224 F.2d 158, 163 (5th Cir. 1955) (''We do not think that any privilege [of the OCC] has been waived by putting copies of the documents in the hands of directors of the bank.''); *In re Subpoena Served Upon the Comptroller of the Currency, and Sec'y of Bd. of Governors of Fed. Reserve Sys.,* 967 F.2d 630, 635 (D.C. Cir. 1992) (''We do not think that sharing a bank examination report or other supervisory information with the subject depository institution can reasonably be thought to bear upon the continuing need for the privilege.''). The sound reasons underlying the preservation of the supervisory agency's privilege when it provides information to a supervised entity apply equally to the communication of privileged information in the opposite direction, and support preservation of the supervised entity's privilege when it provides privileged information to its supervisor.

[17] *See* Dodd-Frank Act § 1061(b), 12 U.S.C. 5581(b).

[18] *See* Dodd-Frank Act § 1025(b), (e), 12 U.S.C. 5515(b), (e).

[19] *See* 12 U.S.C. 1828(x), 1785(j).

[20] *See* 12 U.S.C. 1821(t).

[21] *See* Dodd-Frank Act § 1061(c)(1)(B), 12 U.S.C. 5581(c)(1)(B).

[22] *See* Dodd-Frank Act § 1021(a), 12 U.S.C. 5511(a).

provide maximum assurance to its supervised entities, the Bureau is proposing to exercise its delegated rulemaking authority to prescribe a rule intended to govern any third party's claim in Federal or State court that a supervised entity has waived any applicable privilege by providing information to the Bureau in the course of its supervisory or regulatory processes.

In addition to applying to claims regarding large depository institutions and credit unions and their affiliates, the proposed rule will apply to third parties' claims that nondepository institutions or other persons have waived any applicable privilege by providing information to the Bureau in the course of its supervisory or regulatory processes. In enacting Title X of the Dodd-Frank Act, Congress authorized the Bureau to exercise its authority to ensure that ''Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition.'' [23] Indeed, Congress directed the Bureau to ''seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' [24] The Bureau's exercise of supervisory and regulatory authority over nondepository institutions and other persons must, therefore, be consistent with its exercise of supervisory and regulatory authority over large depository institutions and credit unions and their affiliates. Accordingly, consistent with the broad language of 12 U.S.C. 1828(x) adopted by the proposed rule, the Bureau intends for the proposed rule to apply to the submission of privileged information by any person subject to the Bureau's supervisory or regulatory authority.

Once effective, the rule is intended to govern all claims by third parties in Federal or State court that any person has waived any applicable privilege by providing information to the Bureau, even if the submission of such information to the Bureau occurred prior to the date the rule became effective. Furthermore, as the Bureau stated in CFPB Bulletin 12–01, the Bureau is prepared to take all reasonable and appropriate steps to assist supervised entities in rebutting any claims made in Federal or State court, both before and after the rule's effective date, that supervised entities have waived any privilege by providing privileged information to the Bureau.

B. Amendment of 12 CFR 1070.47

The Bureau also proposes to readopt in modified form its rule regarding the effect upon any applicable privilege when the Bureau discloses information pursuant to its authority under subpart D of its Rules Relating to the Disclosure of Records and Information. The proposed rule would provide as follows:

(c) *Non-waiver.*

(1) In General. The CFPB shall not be deemed to have waived any privilege applicable to any information by transferring that information to, or permitting that information to be used by, any Federal or State agency.

(2) Rule of Construction. Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

Under subpart D, appropriate Bureau personnel are authorized to disclose confidential information to certain individuals and entities in certain circumstances. For example, the Bureau is authorized to disclose, in appropriate circumstances, confidential information to another Federal or State agency.[25] On July 28, 2011, the Bureau issued an interim final rule, which provides that ''[t]he provision by the CFPB of any confidential information pursuant to this subpart does not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under federal law.'' [26] In the preamble, the Bureau stated that this paragraph was intended to clarify ''that disclosures of confidential information pursuant to subpart D are *not intended* and should not be construed to constitute a waiver of any privileges that are otherwise available to the CFPB or to any agency or person with respect to this confidential information.'' [27] The Bureau requested comments on its interim final rule, but did not receive any comments on this particular provision.

The Bureau proposes to readopt this rule in slightly modified form to clarify that it is intended not merely to express the Bureau's intent not to waive any applicable privilege, but to provide the applicable rule of decision for any claim, in Federal or State court, that the Bureau has waived any applicable privilege—whether the privilege belongs to the Bureau, another Federal or State agency, or a regulated entity—by sharing information with a Federal or State agency pursuant to subpart D.[28] The Bureau also proposes to limit the rule to disclosures to Federal and State agencies. Congress generally directed the Bureau to coordinate its regulatory activities with other Federal and State agencies ''to promote consistent regulatory treatment of consumer financial and investment products and services.'' [29] In addition, Congress specifically directed the Bureau to share draft and final reports of examination with other Federal and State agencies, and authorized the Bureau to engage in joint investigations with other Federal and State agencies.[30] The coordinated intergovernmental action envisioned by Title X of the Dodd-Frank Act would be significantly hampered if the Bureau were not able to exchange privileged information with these agencies freely. The Bureau believes that courts would be unlikely to find a waiver of privilege in these circumstances. Nonetheless, in order to provide assurances comparable to those provided by 12 U.S.C. 1821(t), the Bureau proposes to adopt a rule providing that ''[t]he Bureau shall not be deemed to have waived any privilege applicable to any information by transferring that information or permitting that information to be used by any Federal or State agency.'' In other contexts in which the Bureau discloses information pursuant to subpart D, the Bureau expects determinations regarding privilege waiver to be made by the courts pursuant to otherwise applicable law.

III. Legal Authority

A. Rulemaking Authority

The Bureau's proposed rule is based on its authority to ''prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer

[23] *See* Dodd-Frank Act § 1021(b)(4), 12 U.S.C. 5511(b)(4).

[24] *See* Dodd-Frank Act § 1021(a), 12 U.S.C. 5511(a) (emphasis added); *see also* S. Rep. No. 111–176, at 168 (describing as one of the purposes of section 1025 of the Dodd-Frank Act as eliminating opportunities for ''regulatory arbitrage'').

[25] *See* 12 CFR 1070.43.

[26] *See* 12 CFR 1070.47(c).

[27] *See* Interim Final Rule, 76 FR 45372, 45375–76 (July 28, 2011) (emphasis added).

[28] The Bureau believes that the prudential regulators' ability to transfer information to other Federal agencies without effecting a waiver is also a ''power[] * * * relating'' to the transferred supervision authority that was granted to the Bureau by section 1061 of the Dodd-Frank Act.

[29] *See* Dodd-Frank Act § 1015, 12 U.S.C. 5495.

[30] *See* Dodd-Frank Act §§ 1022(c)(6)(C), 1025(e), 1052(a); 12 U.S.C. 5512(c)(6)(C); 5515(e); 5562(a).

financial laws.'' [31] As explained above, the proposed 12 CFR 1070.48 will ensure that the confidential and privileged nature of information obtained by the Bureau in the course of any supervisory or regulatory process is not waived, destroyed, or modified by compliance with the Bureau's requests for information. The proposed amendment to 12 CFR 1070.47(c) ensures that the sharing of information with Federal and State agencies mandated or authorized by Title X of the Dodd-Frank Act does not affect the confidential and privileged nature of the information.

In addition, the Bureau relies on its general rulemaking authority to ''prescribe rules * * * as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [32] The supervision and other authorities provided by Title X of the Dodd-Frank Act are components of ''Federal consumer financial law.'' As explained above, the proposed rules are necessary and appropriate measures to ensure that the Bureau is able to implement these authorities, and to do so consistently ''without regard to the status of a person as a depository institution, in order to promote fair competition.'' [33] By providing greater certainty to supervised entities, this rule will also prevent evasions of the Bureau's supervisory and other authorities based on concerns about the risk of waiving privilege.

Finally, the Bureau also relies on its authority to ''prescribe rules to facilitate the supervision of [nondepository institutions] and assessment and detection of risks to consumers.'' [34] For the reasons discussed above, the proposed rule will facilitate the Bureau's supervision of nondepository institutions and thereby enhance the Bureau's ability to assess and detect risks to consumers.

[31] *See* Dodd-Frank Act § 1022(c)(6)(A); 12 U.S.C. 5512(c)(6)(A).

[32] *See* Dodd-Frank Act § 1022(b)(1), 12 U.S.C. 5512(b)(1).

[33] *See* Dodd-Frank Act § 1021(b)(4), 12 U.S.C. 5511(b)(4); *see also* Dodd-Frank Act § 1021(a), 12 U.S.C. 5511(a).

[34] *See* Dodd-Frank Act § 1024(b)(7)(A), 12 U.S.C. 5514(b)(7)(A). This rulemaking does not concern supervisory requirements or coordinated registration systems for nondepository institutions. Accordingly, the Bureau has determined that consultation with state agencies is not appropriate. *See* Dodd-Frank Act § 1024(b)(7)(D); 12 U.S.C. 5514(b)(7)(D).

B. Section 1022(b)(2) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[35]

The proposed rule provides that the submission by any person of information to the Bureau in the course of the Bureau's supervisory or regulatory processes does not waive or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to any other person or entity. The proposed rule also provides that the Bureau's provision of privileged information to another Federal or State agency does not waive any applicable privilege.

As explained above, the Bureau believes that the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes, or the Bureau's transfer of privileged information to other Federal and State agencies, generally does not waive or otherwise affect any privilege a person may claim with respect to such information under Federal or State law as to any other person or entity. The proposed rule would codify this understanding in order to provide entities subject to the Bureau's supervisory or regulatory authority further assurances that the submission of privileged information to the Bureau, or the Bureau's subsequent transmission of the information to other government agencies, will not affect the privileged and confidential nature of the information. Because the proposed rule generally will not result in a determination regarding the privileged nature of information different than that which would have been reached in the absence of the rule, the proposed rule is not expected to impose any costs on consumers or covered persons or to impact consumers' access to consumer financial products or services. Notably, the rule does not impose obligations on covered persons to provide information; rather, any requirement to provide information stems from the Bureau's authority under existing law.

Assuming, however, that the proposed rule would result in a determination regarding the privileged nature of information different than that which would be reached under existing law, the proposed rule would benefit covered persons by protecting any applicable privilege a covered person that provides information to the Bureau may claim in response to a third party's claim of waiver. Furthermore, in that scenario, the proposed rule could impose a potential cost on consumers or covered persons involved in subsequent third-party litigation regarding a supervised entity to the extent the rule, as opposed to existing law, prevents them from compelling privileged information subject to the rule pursuant to a theory of waiver.

Finally, the proposed rule has no unique impact on insured depository institutions or insured credit unions with less than $10,000,000,000 in assets as described in section 1026 of the Dodd-Frank Act. Nor does the proposed rule have a unique impact on rural consumers.

The Bureau requests comments on the potential benefits, costs, and impacts of the proposal.

IV. Request for Comment

The Bureau invites comments on all aspects of this notice and the proposed rule, including the proposed rule's scope.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business

[35] Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas. The manner and extent to which the provisions of section 1022(b)(2) apply to a rule of this kind that does not establish standards of conduct is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

representatives prior to proposing a rule for which an IRFA is required.

When an agency issues a rulemaking proposal, the RFA requires the agency to, ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the proposed rule on small entities.'' The RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

An IRFA is not required for this proposal because, if adopted, it would not have a significant economic impact on a substantial number of small entities. The proposed rule does not impose obligations or standards of conduct on any entities. In any event, as noted, the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes or the Bureau's later disclosure of such submitted material generally does not waive or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to any other person or entity. The proposed rule is intended to codify this result in order to give further assurance to entities subject to the Bureau's authority. Any requirement to provide information stems from the Bureau's authority under existing law, not the proposed rule. To the extent that the proposed rule alters existing law, it protects any applicable privilege under Federal or State law that a covered person that provides information to the Bureau may claim.

Accordingly, the undersigned hereby certifies that, if promulgated, the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1070, Subpart D

Confidential business information, Consumer protection, Privacy.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR part 1070, subpart D, as set forth below:

PART 1070—DISCLOSURES OF RECORDS AND INFORMATION

Subpart D—Confidential Information

1. The authority citation for part 1070 continues to read as follows:

Authority: 12 U.S.C. 3401; 12 U.S.C. 5481 *et seq.;* 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 30; 5 U.S.C. 301.

2. Amend § 1070.47 by revising paragraph (c) to read as follows:

§ 1070.47 Other Rules Regarding Disclosure of Confidential Information.

* * * * *

(c) *Non-waiver.* (1) In General. The CFPB shall not be deemed to have waived any privilege applicable to any information by transferring that information to, or permitting that information to be used by, any Federal or State agency.

(2) Rule of Construction. Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

3. Add § 1070.48 to subpart D to read as follows:

§ 1070.48 Privileges not affected by disclosure to the CFPB.

(a) *In General.* The submission by any person of any information to the CFPB for any purpose in the course of any supervisory or regulatory process of the Bureau shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the CFPB.

(b) *Rule of Construction.* Paragraph (a) shall not be construed as implying or establishing that—

(1) Any person waives any privilege applicable to information that is submitted or transferred under circumstances to which paragraph (a) does not apply; or

(2) Any person would waive any privilege applicable to any information by submitting the information to the CFPB but for this section.

Dated: March 12, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–6254 Filed 3–14–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0264; Directorate Identifier 2011–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A300 F4–600R series airplanes. This proposed AD was prompted by a report that chafing was detected between the autopilot electrical wiring conduit and the wing bottom skin. This proposed AD would require modifying the wiring installation on the right-hand wing. We are proposing this AD to prevent sparking due to electrical chafing when flammable vapors are present in the area, which could cause an uncontrolled fire.

DATES: We must receive comments on this proposed AD by April 30, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–2125; fax: (425) 227–1149; email: *Dan.Rodina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0264; Directorate Identifier 2011–NM–179–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0161, dated August 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a scheduled general visual inspection in a zone adjacent to a fuel tank (zone 675) chafing was detected between the autopilot electrical wiring conduit and the wing bottom skin.
>
> This condition, in the scope of published FAA SFAR88 [Special Federal Aviation Regulation] and JAA [Joint Aviation Authority] Internal Policy INT/POL/25/12, is considered on ground to be a potential source of explosive condition due to the risk of a spark with electrical wire chafing when flammable vapours are present in the area. If left uncorrected, this condition could lead to an uncontrolled fire.
>
> For the reasons described above, this [EASA] AD requires modification of the wiring installation to improve the routing and the protection of the harnesses in the zone 675/Rib 6 of the Right Hand wing.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–24–6109, dated July 4, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 132 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,720 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $305,580, or $2,315 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0264; Directorate Identifier 2011–NM–179–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A300 F4–605R and F4–622R airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 92.

(e) Reason

This AD was prompted by a report that chafing was detected between the autopilot electrical wiring conduit and the wing bottom skin. We are issuing this AD to prevent sparking due to electrical chafing when flammable vapors are present in the area, which could cause an uncontrollable fire.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Modification

Within 30 months or 4,500 flight hours after the effective date of this AD, whichever occurs first: Modify the wiring in zone 675 of the right-hand wing, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–6109, dated July 4, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–2125; fax: (425) 227–1149; email: *Dan.Rodina@faa.gov.* Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0161, dated August 26, 2011; and Airbus Mandatory Service Bulletin A300–24–6109, dated July 4, 2011; for related information.

Issued in Renton, Washington, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6246 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0265; Directorate Identifier 2010–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Dassault Aviation Model FALCON 7X airplanes. The existing AD currently requires revising the Abnormal Procedures and Limitations sections of the Dassault F7X airplane flight manual. Since we issued that AD, we have determined that additional actions are necessary to address the identified unsafe condition. This proposed AD would require performing a test of the power distribution control units (PDCU) cards and generator control units (GCU) cards to detect faculty components, and if any faulty components are found, replacing any affected PDCU or GCU card. We are proposing this AD to detect and correct a leakage failure mode of transient voltage suppression (TVS) diodes used on PDCU cards or GCU cards in the primary power distribution boxes (PPDB), which, in combination with other system failures, could lead to loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 30, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Dassault service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* For Goodrich Corporation, Power Systems, 1555 Corporate Woods Parkway, Uniontown, Ohio 44685–8799; telephone 330–487–2007; fax 330–487–1902; email *twinsburg.techpubs@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0265; Directorate Identifier

2010–NM–216–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On August 11, 2010, we issued AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010). That AD required actions intended to address an unsafe condition on certain Dassault Aviation Model FALCON 7X airplanes. The preamble of AD 2010–18–03 explains that we consider the requirements of that AD ''interim action'' and are considering further rulemaking to mandate inspection (testing) of the PDCU and GCU cards and replacement of faulty cards, as required by European Aviation Safety Agency AD 2010–0073, dated April 15, 2010. The planned compliance time for those actions would allow enough time for prior public comment on the merits of those actions. This proposed AD follows from that determination.

The unsafe condition is a leakage failure mode of TVS diodes used on PDCU or GCU cards in the PPDB, which, in combination with other system failures, could lead to loss of controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault Aviation has issued Mandatory Service Bulletin 7X–133, dated December 4, 2009. Goodrich Power Systems has issued the following service bulletins:

- Goodrich Service Bulletin 80232190–24–01, dated August 13, 2009;
- Goodrich Service Bulletin 80232191–24–01, dated August 13, 2009; and
- Goodrich Service Bulletin 80232192–24–01, dated August 13, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 9 products of U.S. registry.

The actions that are required by AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010), and retained in this proposed AD, take about 4 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $340 per product.

We estimate that it would take about 4 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,060, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010), and adding the following new AD:

Dassault Aviation: Docket No. FAA–2012–0265; Directorate Identifier 2010–NM–216–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

This AD supersedes AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, all serial numbers except those on which Dassault Aviation Modification M724 is embodied.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by a determination that additional actions are necessary to address the identified unsafe condition identified in AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010). We are issuing this AD to detect and correct a leakage failure mode of transient voltage suppression (TVS) diodes used on power distribution control units (PDCU) cards or generator control units (GCU) cards in the primary power distribution boxes, which, in combination with other system failures, could lead to loss of controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Airplane Flight Manual Revision (AFM)

This AFM revision is retained from AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010): Within 30 days after September 8, 2010 (the effective date of AD 2010–18–03, Amendment 39–16416 (75 FR 51931, August 24, 2010)), revise the Abnormal Procedures and Limitations sections of the Dassault F7X AFM to include the following statement. This may be done by inserting copies of this AD into the AFM Limitations section and Abnormal Procedures section.

''Upon display of ELEC:BUS MISCONFIG TIED in Crew Alerting System (Abnormal procedure 3–190–20), land at nearest suitable airport

Upon display of ELEC:LH ESS PWR LO or ELEC:LH ESS NO PWR (Abnormal procedure 3–190–40), land at nearest suitable airport

Upon display of ELEC:RH ESS PWR LO and ELEC:RH ESS NO PWR (Abnormal procedure 3–190–45), land at nearest suitable airport

Upon display of HYD:BACKUP PUMP HI TEMP (Abnormal procedure 3–250–15), set off the pump and if the backup pump is still rotating (green) in hydraulic synoptic, descend to a safe altitude or below 15,000 ft

Caution: These temporary amendments take precedence over the same procedures displayed through the Electronic Check List (ECL) in the aeroplane.''

Note 1 to paragraph (g) of this AD: When a statement identical to that in paragraph (g) of this AD has been included in the Limitations section and Abnormal Procedures section in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed.

(h) New Requirements of This AD: Test the PDCU and GCU Cards

For airplanes identified in Dassault Mandatory Service Bulletin 7X–133, dated December 4, 2009: Within 9 months after the effective date of this AD, perform a test of the PDCU and GCU cards to detect faulty components, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–133, dated December 4, 2009. If any faulty components are found, before further flight, replace any affected PDCU or GCU card, in accordance with the Accomplishment Instructions of Dassault Aviation Mandatory Service Bulletin 7X–133, dated December 4, 2009.

(i) Optional Method of Compliance

For airplanes identified in Dassault Mandatory Service Bulletin 7X–133, dated December 4, 2009: Accomplishing the actions specified in paragraph (h) of this AD, within 9 months after the effective date of this AD, in accordance with the service information specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, is acceptable for compliance with the actions specified in paragraph (h) of this AD.

(1) Goodrich Service Bulletin 80232190–24–01, dated August 13, 2009.

(2) Goodrich Service Bulletin 80232191–24–01, dated August 13, 2009.

(3) Goodrich Service Bulletin 80232192–24–01, dated August 13, 2009.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0073, dated April 15, 2010, and the service bulletins specified in paragraphs (k)(1) through (k)(4) of this AD, for related information.

(1) Dassault Aviation Mandatory Service Bulletin 7X–133, dated December 4, 2009.

(2) Goodrich Service Bulletin 80232190–24–01, dated August 13, 2009.

(3) Goodrich Service Bulletin 80232191–24–01, dated August 13, 2009.

(4) Goodrich Service Bulletin 80232192–24–01, dated August 13, 2009.

Issued in Renton, Washington, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6249 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1213; Airspace Docket No. 11–ANM–23]

Proposed Amendment of Class E Airspace; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Dillon Airport, Dillon, MT. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Dillon Airport. This action also would make an adjustment to the geographic coordinates of the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Dillon Airport, Dillon, MT.

DATES: Comments must be received on or before April 30, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1213; Airspace Docket No. 11–ANM–23, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1213 and Airspace Docket No. 11–ANM–23) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1213 and Airspace Docket No. 11–ANM–23''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Dillon Airport, Dillon, MT. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Dillon Airport. The geographic coordinates of the airport also would be updated to coincide with the FAA's aeronautical database. This action would enhance the safety and management of aircraft operations at Dillon Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would create additional controlled airspace at Dillon Airport, Dillon, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E. ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Dillon, MT [Modified]

Dillon Airport, MT
(Lat. 45°15′19″ N., long. 112°33′09″ W.)

That airspace extending upward from 700 feet above the surface within a 9.2-mile radius of the Dillon Airport; that airspace extending upward from 1,200 feet above the surface within 8.3 miles northwest and 5.3 miles southeast of the Dillon Airport 025° bearing extending from the airport to 20.9 miles northeast; and that area bounded by a line beginning at lat. 45°17′00″ N., long. 112°48′00″ W.; to lat. 45°10′00″ N., long. 112°41′00″ W.; to lat. 44°57′00″ N., long. 112°37′00″ W.; to lat. 44°57′30″ N., long. 112°33′30″ W.; to lat. 44°30′00″ N., long. 112°25′00″ W.; to lat. 44°30′00″ N., long. 112°30′00″ W.; to lat. 45°06′00″ N., long. 113°09′00″ W., thence to the point of beginning; that airspace extending upward from 11,700 feet MSL within 6.6 miles west and 9.2 miles east of the Dillon Airport 168°

bearing extending 17 miles south of the airport.

Issued in Seattle, Washington, on March 8, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–6344 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0217; Airspace Docket No. 12–AEA–2]

Proposed Establishment of Class D and E Airspace Amendment of Class E Airspace; East Hampton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D and E airspace and amend existing Class E airspace at East Hampton, NY, to accommodate the new air traffic control tower at East Hampton Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport's existing Class E airspace.

DATES: 0901 UTC. Comments must be received on or before April 30, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–0217; Airspace Docket No. 12–AEA–2, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: John Fornito, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA docket number. FAA–2012–0217; Airspace Docket No. 12–AEA–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.* Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D airspace, Class E surface area airspace and amend existing Class E airspace extending upward from 700 feet above the surface at East Hampton Airport, East Hampton, NY. Controlled airspace is necessary to support the operation of the new air traffic control tower, and would enhance the safety and management of IFR operations at the airport. Also, the geographic coordinates would be adjusted for the airport's existing controlled airspace area to be in concert with the FAAs aeronautical database.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class D and E airspace and amend existing Class E airspace at East Hampton Airport, East Hampton, NY.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 will continue to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

AEA NY D East Hampton, NY [NEW]

East Hampton Airport, NY
(Lat. 40°57′34″ N., long. 72°15′06″ W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.8-mile radius of East Hampton Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AEA NY E2 East Hampton, NY [NEW]

East Hampton Airport, NY
(Lat. 40°57′34″ N., long. 72°15′06″ W.)

That airspace extending upward from the surface within a 4.8-mile radius of East Hampton Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 East Hampton, NY [Amended]

East Hampton Airport, NY
(Lat. 40°57′34″ N., long. 72°15′06″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of East Hampton Airport.

Issued in College Park, Georgia, on March 9, 2012.

Barry A. Knight

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–6338 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AB15]

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes several amendments to improve the Appliance Labeling Rule by streamlining requirements for manufacturers, increasing the availability of labels for consumers, and clarifying various aspects of the Rule. Specifically, the proposed amendments would eliminate duplicative reporting requirements for manufacturers, introduce a uniform method for attaching labels to appliances, place EnergyGuide labels on room air conditioner boxes instead of on the products themselves, improve current Web site disclosures, and revise ceiling fan labels. The proposed amendments also would clarify enforcement rules for data reporting, testing access, and Web site disclosures. The Commission requests comments on these proposed changes. In addition, as a part of the Commission's systematic review of its regulations and guides, the Commission seeks comments on the Rule's overall costs and benefits and its overall regulatory and economic impact.

DATES: Written comments must be received by May 16, 2012.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in section VI. of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted using the following weblink: *https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm* (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex A), 600 Pennsylvania Avenue NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. FTC's Appliance Labeling Rule

The Commission's Appliance Labeling Rule, issued pursuant to the Energy Policy and Conservation Act (EPCA),[1] requires energy labeling for major household appliances and other consumer products to help consumers compare competing models.[2] When first published in 1979,[3] the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage to include categories such as central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.[4]

[1] 42 U.S.C. 6291 *et seq.*

[2] For more information about the Rule, *see http://www.ftc.gov/appliances.*

[3] 44 FR 66466 (Nov. 19, 1979).

[4] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5,

The Rule requires manufacturers to attach yellow EnergyGuide labels to certain covered products.[5] It prohibits retailers from removing these labels or rendering them illegible.[6] In addition, the Rule directs sellers, including retailers, to post label information on Web sites and in paper catalogs from which consumers can order covered products.[7]

EnergyGuide labels for appliances and televisions contain three key disclosures: estimated annual operating cost (for most products), a ''range of comparability'' showing the highest and lowest energy consumption or efficiencies for all similar models, and a product's energy consumption or energy efficiency rating as determined from standard Department of Energy (DOE) tests. The Rule specifies this content as well as the label's format. Manufacturers cannot place any information on the label other than that specifically allowed by the Rule.

Finally, the Rule contains reporting requirements for most products. Under these requirements, manufacturers must submit data to the FTC both when they begin manufacturing new models and annually.[8] These reports must contain, among other things, estimated annual energy consumption or energy efficiency ratings.

II. Proposed Amendments

The Commission seeks comment on several proposed changes to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers, and generally to improve existing requirements. Specifically, the proposed changes would: (1) Eliminate duplicative requirements by harmonizing FTC and DOE reporting and testing rules; (2) prohibit hang tag labels for all covered clothes washers, dishwashers, and refrigerators and instead require adhesive labels; (3) require placement of room air conditioner labels on display boxes instead of on the product; (4) improve retailer Web site and paper catalog disclosures; (5) include estimated operating cost information on ceiling fan labels; (6) include specific capacity numbers on clothes washer EnergyGuide labels; (7) require a QR (''Quick Response'') code on EnergyGuide labels to link mobile phone users to FTC and DOE information; (8) update product definitions for refrigerators and freezers; (9) clarify the Rule's enforcement provisions; and (10) shorten the Rule's title.[9] The following addresses each of these proposals in detail.

A. Harmonization of Reporting and Testing Requirements

By harmonizing existing FTC and DOE regulations, the proposed amendments would streamline existing reporting requirements. Currently, the FTC requires manufacturers to submit annual reports containing energy-related information about their covered products.[10] Similarly, DOE requires manufacturers to submit reports certifying that their new products meet federal efficiency standards.[11] The proposed amendments would streamline the Rule's reporting burden in three ways.[12]

First, under current rules, manufacturers of each covered product must submit one report to DOE and another, largely duplicative report to the FTC. The proposed amendments would allow manufacturers to meet FTC reporting requirements by using DOE's new web-based tool for energy reporting (the ''Compliance and Certification Management System'' (CCMS)).[13] Once manufacturers upload their data, the FTC would be able to obtain the information from DOE and place it on the public record.[14] This change would ease reporting for manufacturers and eliminate confusion caused by two separate government data collection requirements for identical products.[15]

Second, the Commission proposes to harmonize FTC reporting requirements with DOE certification rules. To achieve this goal, the Commission proposes requiring the same report content as DOE. However, for ceiling fans, the FTC will continue to maintain separate reporting requirements because DOE's regulations contain test procedures for these products but do not currently require manufacturers to conduct such tests.

Third, the Commission proposes to clarify the DOE testing requirements manufacturers must use to determine energy information for FTC labels. The current FTC Rule requires adherence to applicable DOE test procedures, but does not mention several DOE requirements related to testing, including sampling rules, testing accreditation (for light bulbs), and DOE testing waiver procedures. The amendments would specify that manufacturers must test their products in accordance with these applicable DOE requirements.[16] This amendment should eliminate any confusion among manufacturers and, therefore, ensure that the content of energy disclosures on the FTC labels is based on all DOE-required testing provisions.[17]

The Commission seeks comments on these proposals, including the length of time required to implement these changes, the need for the changes, and the costs and benefits of the proposals.

B. Adhesive Labels for Clothes Washers, Dishwashers, and Refrigerators

To improve the availability of EnergyGuide labels for clothes washers, dishwashers, and refrigerators, the Commission proposes to prohibit hang tags on these products and, instead,

1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); and 76 FR 1038 (Jan. 6, 2011) (televisions).

[5] *See* 42 U.S.C. 6302(a)(1); 16 CFR 305.4(a)(1). The Rule requires an energy disclosure or label on all covered products or on their packages. The EnergyGuide label must appear on refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, pool heaters, central air conditioners, heat pumps, furnaces, and televisions. *See* 16 CFR 305.11, 305.12, 305.14, and 305.17. The EnergyGuide label constitutes a visually uniform ''brand'' for all these products, but it has different dimensions and disclosures based on the nature and energy use of the product. *See* 16 CFR 305 Appx. L (label prototypes). Ceiling fans must bear labels somewhat similar to EnergyGuide labels, but visually distinct. 16 CFR 305.13. The remainder of the Rule's covered products bear other types of labels or disclosures related to energy or water use (for plumbing products), rather than the EnergyGuide brand. For example, common consumer light bulbs manufactured beginning in 2012 must bear a ''Lighting Facts'' label.

[6] *See* 16 CFR 305.4(a)(2); 42 U.S.C. 6302(a)(2).

[7] *See* 16 CFR 305.20; 42 U.S.C. 6296(a).

[8] *See* 16 CFR 305.8; 42 U.S.C. 6296(b).

[9] The Commission is also proposing several technical corrections described in section III.

[10] *See* 16 CFR 305.8; 42 U.S.C. 6296(b)(4). In addition to annual reports, manufacturers must submit a report for each new model prior to distribution of that model.

[11] *See* 10 CFR Part 430; 42 U.S.C. 6296.

[12] These amendments would not affect televisions and LED bulbs because the Rule's reporting requirements do not apply to those products. 76 FR 1038, 1040 n.28 (Jan. 6, 2011). The Rule does not currently require reporting for televisions and light-emitting diode lamps because no DOE test procedures exist for those products at this time.

[13] 75 FR 27183 (May 14, 2010).

[14] *See* 16 CFR 4.9(b)(10)(xii).

[15] The Commission does not propose to eliminate FTC reporting requirements altogether because EPCA requires manufacturers to submit annual reports to the FTC containing ''relevant data respecting energy consumption and water use developed in accordance with'' applicable DOE test procedures. 42 U.S.C. 6296(b)(4).

[16] Unless otherwise specified in the Rule, the Commission does not propose to require compliance with any DOE testing provisions that are not required for DOE certification (*e.g.,* certain lamp measurements). This will ensure that FTC does not inadvertently impose more specific testing burdens than DOE.

[17] The proposed amendments also eliminate various references to recommended IES test procedures of incandescent and compact fluorescent lamps that are now covered by DOE testing requirements. Comments should address whether any of these references should remain in the Rule and, if so, why.

require adhesive labels.[18] Under the current Rule, these products must display EnergyGuide labels in a location visible to consumers either in the form of a hang tag attached inside the product or an adhesive labels affixed outside or inside the product. The proposal to eliminate hang tags and require adhesive labels is designed to decrease the number of missing labels in showrooms because hang tags appear to detach easily.[19]

Evidence gathered by the FTC and the Government Accountability Office (GAO) demonstrates that many showroom products do not have EnergyGuide labels attached. Specifically, GAO visits to 30 stores in 2007 found that 26 percent of products examined had no EnergyGuide label and another 24 percent had labels that were ''no longer affixed in a prominent and easily accessible location.'' [20] Following the GAO report, FTC staff conducted its own examination of more than 8,500 appliances in 89 retail locations.[21] The FTC found labels either detached or missing altogether on approximately 38 percent of appliances examined.[22]

Comments received in the television rulemaking indicated that hang tags often become twisted or dislodged in stores.[23] In addition, FTC staff found that products frequently labeled with hang tags (*i.e.*, clothes washers, dishwashers, and refrigerator-freezers) are more likely to have detached or missing labels compared to water heaters, which are generally labeled with adhesive labels.[24] The Commission, therefore, is concerned that hang tags may be more prone to detachment than adhesive labels and offer a less secure means to affix labels.

Accordingly, the Commission seeks comment on whether requiring adhesive labels (and prohibiting hang tags) for clothes washers, dishwashers, and refrigerators would improve label availability in showrooms.[25] If a comment indicates such a change would improve the label's effectiveness, please explain why. If not, please explain why not. Comments should identify the time required by industry members to switch to adhesive labels without undue burden, whether there are alternative approaches to reduce the burden of such changes, and whether the proposal accomplishes the Commission's goal of providing disclosures to consumers. Also, because dishwashers and clothes washers may have limited interior surface area for adhesive labels, the Commission asks whether the EnergyGuide label for these products should be smaller. Should the Commission adopt a smaller label size, comments should also address whether the text size, graphics, and wording for the current label should, if possible, remain the same as the current label. The Commission developed the current content and format of the label after conducting extensive consumer research, and therefore, is concerned that content changes to accommodate a smaller label would reduce the label's effectiveness for consumers.[26] Comments should address whether a smaller label would decrease the label's utility in helping consumers make purchasing decisions and, if so, how.

C. Room Air Conditioners

The Commission proposes requiring manufacturers to print or affix EnergyGuide labels on room air conditioner boxes instead of adhering them to the units themselves. Under the current Rule, manufacturers must place an adhesive EnergyGuide label on the exterior of room air conditioners. However, FTC staff has observed that retailers often display these products in boxes stacked on shelves or the showroom floor. Therefore, consumers cannot examine the label before purchase. The proposed box label would address this concern.[27] The Commission proposes to provide manufacturers with at least two years to implement this change to minimize the burdens associated with package changes.

The Commission seeks comments on this proposal. In particular, comments should address whether retailers typically display room air conditioners in or out of the box, and whether the proposal would accomplish the Commission's goal of consistently providing energy disclosures to consumers. Comments should provide detailed information about the costs of the proposed change, including whether two years is sufficient lead time to come into compliance with a package label requirement without undue burden, or whether the changes can be made more quickly. Finally, comments should address whether the Commission should require labels on boxes for any other covered products (*e.g.,* water heaters or pool heaters) in lieu of the existing labels affixed directly to those products.

D. Web site and Paper Catalog Disclosures

The Commission proposes several amendments to enhance the energy information available to consumers in ''catalogs'' (*i.e.,* print catalogs and Web sites selling covered products).[28] First, the amendments would require retail Web sites to post the full EnergyGuide or Lighting Facts label online.[29] The Rule would require these Web sites to post the full label or to use an FTC-provided icon to link consumers to the full version of the EnergyGuide or Lighting Facts label. Second, to ensure that retail Web sites have access to the label, the amendments would require that manufacturers make the EnergyGuide and Lighting Facts labels

[18] The Commission's recent television labeling rule prohibits hang tags on televisions for the same reasons given here. *See* 76 FR 1038.

[19] The current Rule defines a hang tag for clothes washers, dishwashers, and refrigerators as a label ''affixed to the product * * * using string or similar material.'' 16 CFR 305.11(d)(2). Because the Rule does not allow hang tags on product exteriors, manufacturers cannot use hang tags on water heaters and other products that do not have an interior visible to consumers.

[20] United States GAO, Energy Efficiency—Opportunities Exist for Federal Agencies to Better Inform Household Consumers, GAO–07–1162, Sept. 2007, at 6.

[21] The staff visited stores in nine metropolitan areas across the country in 2008. The results are not necessarily nationally representative.

[22] The staff examined clothes washers, dishwashers, refrigerator products (freezers, refrigerators, and refrigerator-freezers), room air conditioners, and water heaters. The examination did not find specific models or brands consistently missing labels. Accordingly, the visits provided no clear evidence that specific manufacturers are routinely failing to label their products.

[23] 76 FR at 1044.

[24] The store visit data indicate that dishwashers, clothes washers, and refrigerator-freezers frequently bear hang tags because the many of these products had hang tags either attached to the product or lying detached on or in the product (64% for dishwashers, 49% for clothes washers, and 76% for refrigerator-freezers.) By contrast, the results indicate water heaters predominately bear adhesive labels (82% had adhesive labels attached, and there were no detached hang tags found near or on the unlabeled units). Moreover, the products that frequently bear hang tags had a high rate of missing and/or detached labels (31% missing and 25% detached for clothes washers; 26% missing and 24% detached for dishwashers; 12% missing labels and 11% detached for refrigerators, freezers, and refrigerator-freezers.) By contrast, only 14% of water heaters were missing labels (and none had detached labels).

[25] The proposed rule language specifies that manufacturers must attach adhesive labels to the product before distribution in commerce. Manufacturers should not place the labels separately in literature bags or otherwise leave labels unattached when shipping units.

[26] 72 FR 49948 (Aug. 27, 2007).

[27] The Commission has followed this approach with ceiling fan labels, which must appear on the principal display panel of packages. *See* 16 CFR 305.13.

[28] These proposed amendments preserve the current Rule's definition of ''catalog'' to encompass both print and online formats. The current rule defines ''catalog'' as ''printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.'' 16 CFR 305.2(h).

[29] This proposal is consistent with current requirements for television labels. *See* 76 FR 1038.

easily available online. Third, the proposed amendments provide specifications that retail Web sites must follow for the format and placement of the required information (*e.g.,* label or icon). Finally, for paper catalogs, the proposed amendments would continue to allow retailers to use an abbreviated text disclosure in lieu of the full label, due to space and cost constraints.

Under the proposed amendments, Web sites selling EnergyGuide- or Lighting Facts-labeled products would be required to display the full label (either on the product page or through a link). The current Rule does not require Web sites (or paper catalogs) to include the full label, and instead allows an abbreviated, text-only disclosure. The Commission allowed these abbreviated disclosures due to space constraints and the costs of printing the full label would impose on marketers.[30] However, in reaching this decision, the Commission did not examine the differences between Web sites and paper catalogs and their relative capacities to display information. Subsequently, during the television labeling rulemaking, the Commission determined that while paper catalogs continue to have space constraints and associated costs justifying the abbreviated disclosures, this rationale does not apply to Web sites. Accordingly, the Commission required Web sites selling televisions to include the full label or a special icon linking to the label.[31] For the same reasons, the Commission now proposes to require Web sites to include the full label for all EnergyGuide and Lighting Facts-labeled products they sell.

Under the proposal, Web sites either could place the full label on the product's detailed description page, or, to minimize design impact on their sites, they could use a small EnergyGuide or Lighting Facts logo icon provided by FTC to link to the full label. The proposed rule allows Web sites to scale the icon (as well as the label) appropriately to accommodate their layout as long they remain readable and recognizable. The new icon would apply to all products subject to the EnergyGuide or Lighting Facts requirements, including televisions.

Recently, a group of petitioners raised concerns that consumers may view the icon as an endorsement or general claim about a product's environmental quality, rather than as an energy cost disclosure.[32] The petitioners also noted that some Web sites already voluntarily display an EnergyGuide icon, but create confusion by adding text (*e.g.,* ''EnergyGuide rated'') which might imply to consumers that the icon constitutes an endorsement or a general environmental claim.[33] In light of these concerns, the Commission proposes an icon which integrates the text ''Click for this product's energy information'' into the icon design. This additional text is designed to help consumers understand that the icon is a link to label information, and not a product endorsement or environmental claim.[34] The Commission seeks comment on this proposal.

The petitioners also argued that in light of potential confusion, the Commission should not allow an icon at all, and should instead require the full label on the main product pages. The Commission seeks comment on whether requiring the full label, instead of a link to the label, is necessary. In particular, commenters should consider whether such a requirement would unduly impede Web site design and whether the use of the icon with the explanatory text, as proposed in this notice, would address the concern raised by the petitioners.

Second, to facilitate retailer compliance with the Rule, the proposed amendments require that manufacturers make images of their labels available on a Web site for linking and downloading by both paper catalogs and Web sites. Under the proposal, the labels must remain available online for two years after the manufacturer ceases to make the model. This proposed requirement is based on EPCA's mandate that manufacturers ''provide'' a label and is consistent with the recent television label rules.[35]

Third, the proposed amendments provide specifications about the format and placement of the required information on Web sites. In the recent television labeling proceeding, the Natural Resources Defense Council (NRDC) raised concerns that consumers must navigate several layers of information to obtain EnergyGuide information on some Web sites.[36] NRDC argued consumers should not have to scroll down or switch to another tab or page to see the icon.[37] To address these concerns, the Commission proposes to require that the label or icon be displayed ''clearly and conspicuously and in close proximity to the covered product's price.'' This proposal, which is consistent with the new television label requirements, should help ensure that consumers can easily view the label or icon while shopping online without excessive scrolling or clicking, and still providing flexibility to Web site designers. To minimize burden, the label or icon would only need to appear on ''each Web page that contains a detailed description of the covered product and its price,'' rather than alongside every image of a covered product on the site. This would reduce the burden for Web sites that include abbreviated summary pages listing several different models with links to a more detailed individual product page.[38]

Finally, for paper catalogs, the amendments would continue to allow an abbreviated text disclosure in lieu of the full label. Due to the space and cost constraints involved with paper catalogs, inclusion of the entire label may be impractical.[39]

The Commission seeks comment on these proposals. In particular, comments should address whether the Rule should require paper catalogs to place these required disclosures in close proximity to the product's price, as the proposed amendments would require for Web sites. The Commission also seeks

[30] 72 FR 49948, 49961 (Aug. 29, 2007).

[31] *Id.*

[32] Petition of American Council for an Energy Efficient Economy, Consumers Union, and Public Citizen, 10 (July 22, 2011), available at *http://earthjustice.org/sites/default/files/Petition-to-amend-catalog-rule.pdf.*

[33] *Id.*

[34] When using the FTC icon for televisions under current requirements, sellers should not include language that might imply the icon constitutes an endorsement or an environmental claim. For example, adding the words ''EnergyGuide Rated'' near the icon could suggest that the icon represents a product endorsement or a ''green'' claim about the product, rather than a neutral disclosure of energy costs. Such language may be deceptive under section 5 of the FTC Act, 15 U.S.C. 45. If the Commission finalizes the proposed catalog amendments, marketers will have to follow the same approach for other products.

[35] 42 U.S.C. 6296(a); 76 FR 1038. Catalog sellers (both paper and Web sites) may create their own versions of the labels rather than using the images provided by the manufacturers, as long as the labels conform to all the specifications in the amended Rule.

[36] *See* NRDC comments, Aug. 10, 2010, #547194–00011. (*http://www.ftc.gov/os/comments/tvenergylabelsnprm/547194-00011.pdf*).

[37] 76 FR at 1046.

[38] Similarly, the proposed amendments would require that Web site disclosures for required non-label markings or text (*e.g.,* gallons per minute for showerheads and faucets) must be displayed clearly and conspicuously and in close proximity to the product's price on the Web page. The amendments would not impose any design or font size requirements for these disclosures, other than that they be clear and conspicuous.

[39] The proposed amendments also state that if paper catalogs display more than one covered product model on a page, the seller may disclose the utility rates or usage assumptions underlying the energy information (*i.e.,* 10.65 cents per kWh, 8 cycles per week, etc.) only once per page for each type of product (*e.g.,* a single footnote for all refrigerators advertised on the page) rather than repeating the information for each advertised model. The disclosure must be clear and conspicuous.

information on whether the various formats and space limitations associated with paper catalogs would render such a requirement impractical in many cases.

In addition, commenters should address: how the Commission's proposal would impact Web site usability and whether it would allow consumers to easily find EnergyGuide and Lighting Facts information online; whether the proposed amendments provide adequate guidance to Web site designers; the time necessary for catalog sellers and manufacturers to conform to these proposed requirements; and the costs and benefits of the proposal for businesses and consumers.

E. Ceiling Fan Labels

The Commission proposes to enhance the existing ceiling fan label by requiring estimated annual energy cost information as the primary disclosure on ceiling fan labels. The current label, which appears on product boxes, provides information on airflow (cubic feet per minute), energy use in watts, and energy efficiency (cubic feet per minute per watt). Consistent with most other EnergyGuide labels, the Commission proposes to change this current label to focus on energy cost information while presenting existing label information in a less prominent manner. As the Commission has indicated in the past, consumer research suggests energy cost ''provides a clear, understandable tool to allow consumers to compare the energy performance of different models.'' [40] As with the EnergyGuide label for appliances, the new ceiling fan label would state that ''Your cost will depend on your utility rates and use.'' The proposed yellow label features the familiar ''EnergyGuide'' title used for appliances and televisions. The proposed usage and rate assumptions for this energy cost are six hours use per day (at high speed) and eleven cents per kWh/hour.[41] To minimize the burden caused by this change, the Rule would provide manufacturers two years to change their packaging.

The Commission seeks comment on this proposal, including whether six hours per day is an appropriate usage assumption for determining estimated annual energy cost. Additionally, in recent consumer research on light bulb labels, efficiency ratings performed poorly in helping study participants choose efficient products.[42] Comments should address whether ceiling fan labels raise similar issues and, if so, whether efficiency ratings should continue to appear on the labels. Finally, comments should address whether two years is sufficient lead time for manufacturers to come into compliance with a requirement to label packages without undue burden, or whether the changes can be made in less, or more, time.

F. Clothes Washer Capacity

The Commission proposes to require EnergyGuide labels for clothes washers to disclose specific capacity information (*i.e.,* cubic feet). Current EnergyGuide labels indicate whether the model is a ''standard'' or ''compact'' but do not provide a specific volume (*e.g.,* 3.5 cubic feet). The vast majority of models are ''standard'' size, but capacity among standard models varies significantly. Therefore, the general capacity disclosure provides little assistance to consumers. A specific capacity disclosure should help consumers make important product comparisons. It would also complement recent DOE and industry efforts to ensure consistency in clothes washer capacity disclosures which would provide consumers with consistent information whether they are looking at FTC labels, manufacturer advertising, or DOE certification data.[43] Under the proposed amendment, manufacturers would continue to measure capacity using DOE procedures. The Commission seeks comments on this proposal, including the time needed to make the proposed changes.

G. QR Codes on EnergyGuide Labels

The Commission also seeks comments on whether to require manufacturers to place QR (''Quick Response'') codes on the EnergyGuide labels. QR codes are two dimensional black and white matrix barcodes that provide access to a Web site by scanning the code with a mobile phone equipped with scanning software. If implemented, consumers could connect instantly to government Web sites or other sources providing detailed product information, such as the broad energy impacts and greenhouse gas emissions associated with a product's use.[44]

The Commission seeks comment on whether it should pursue such provisions.[45] In particular, comments should address whether the codes would be helpful to consumers in purchasing or using products, and whether they should link to any particular information about covered products. Comments should also address whether these codes raise particular technical challenges or pose any significant burdens for manufacturers. Finally, comments should address the time needed to make any proposed changes.

H. Definitions of Refrigerator and Refrigerator Freezers

On December 16, 2010,[46] DOE, as part of amendments to refrigerator test procedures, issued revised definitions for the terms ''electric refrigerator'' and ''electric refrigerator-freezer.'' The Commission proposes to conform its own definitions for these terms to ensure consistency between FTC and DOE requirements.

I. Clarification of Prohibited Acts Provision

The proposed rule would clarify penalty assessments for several non-labeling violations listed in § 305.4(b). These violations include the refusal to allow access to records, refusal to submit required data reports, refusal to permit FTC officials to observe testing, refusal to supply units for testing, and failure to disclose required energy information in catalogs (*i.e.,* Web sites and paper catalogs).[47] The current Rule does not specify the method (*e.g.,* per day) for assessing penalties for these non-labeling violations.[48]

[40] 72 FR 49948, 49959 (Aug. 29, 2007) (appliance labels); *see also* 75 FR 41696 (July 19, 2010) (light bulb labels); 76 FR 1038 (Jan. 6, 2011) (television labels).

[41] The six hour duty cycle estimate is consistent with earlier research on ceiling fans. *See* Davis Energy Group (Prepared for Pacific Gas & Electric), *Analysis of Standards Options For Ceiling Fans,* May 2004 (*http://www.energy.ca.gov/appliances/2003rulemaking/documents/case_studies/CASE_Ceiling_Fan.pdf*). The 11 cent electricity cost figure, which is based on DOE information, also appears on recently amended light bulb labels and television labels. *See* 75 FR 41696 and 75 FR 12470.

[42] *See* 75 FR 41696, 41703–4 (July 19, 2010).

[43] *See* 75 FR 57556, 57575 (Sep. 21, 2010) and *http://www.aham.org/ht/a/GetDocumentAction/i/51727.*

[44] Recently, DOE announced plans to work collaboratively with the FTC to provide consumers with information about the broad energy use impacts and greenhouse gas emissions of covered products. As part of this announcement, DOE described plans to consider ''full-fuel-cycle'' (''FFC'') measures for emissions and energy in developing energy efficiency standards. Such measures would include, for example, the energy consumed in extracting and transporting primary fuels involved in powering home appliances. Currently, DOE only considers ''site'' energy measures (*e.g.,* the electricity consumers use to run their appliances). 76 FR 51281 (Aug. 18, 2011).

[45] This Notice does not contain specific rule language for this proposal.

[46] 75 FR 78810.

[47] *See* 16 CFR 305.4(b); *see also* 42 U.S.C. 6296(b)(2)&(4) and 6303(a)(3) (data reports and records access), 6296(b)(5) (testing access), 6296(b)(3) (units for testing), and 6296(a) (catalog sales).

[48] In contrast, the current Rule does provide the basis for labeling violations. Specifically, consistent

The proposed amendments would clarify that these violations are subject to civil penalties calculated on a per model per day basis.[49] For example, a manufacturer's refusal to submit required reports accrues a fine of up to $110 per day for each model subject to the reporting requirements. In addition, a Web site seller's failure to post required label information accrues a fine of up to $110 per day for each model on the Web site lacking the disclosure.

J. Amended Rule Title

Finally, the Commission proposes to shorten the Rule's title. When originally promulgated in 1979, the Rule applied only to appliances. Subsequently, the Rule expanded well beyond those products to include lighting, plumbing, and consumer electronics. Accordingly, the Commission proposes to change the Rule's title from ''Part 305—Rule Concerning Disclosures Regarding Energy Consumption and Water Use Of Certain Home Appliances and Other Products Required Under the Energy Policy And Conservation Act ('Appliance Labeling Rule')'' to ''Part 305—Energy And Water Use Labeling For Consumer Products Under The Energy Policy and Conservation Act ('Energy Labeling Rule')''.

III. Section by Section Description of Proposed Changes

Rule Title: The proposed amendments would shorten the Rule's title.

Description of Covered Products (305.3): The proposed amendments would amend the definitions for refrigerator products to ensure consistency with DOE requirements.

Prohibited Acts (305.4): The proposed amendments would clarify that civil penalties assessed per day under § 305.4(b) accrue on a per model basis.

Test Procedures (305.5): The proposed amendments would harmonize FTC test procedure requirements with DOE rules.

Manufacturer Duty to Provide Labels (305.6): The proposed revisions would require manufacturers to make copies of the EnergyGuide and Lighting Facts labels available to the public on a Web site at no charge.

Clothes Washer Volume (305.7): The proposed amendments would require EnergyGuide labels to disclose clothes washer capacity in cubic feet.

Submission of Data (305.8): The proposed amendments would require manufacturers to make a copy of the EnergyGuide label publicly available. They also would allow manufacturers to submit data required by § 305.8 to the DOE in lieu of submitting it to the Commission.

Appliance Label Placement (305.11): The proposed amendments would require adhesive EnergyGuide labels for all appliances with the exception of room air conditioners. The amendments also would require a QR code on the label. Finally, the amendments would require room air conditioner manufacturers to print or affix the label on the product package.

Heating and Cooling Equipment (305.12): The proposed amendments would allow the ENERGY STAR logo on heating and cooling equipment to be wider than one inch. This minor, non-substantive change accommodates new, wider ENERGY STAR logos developed by the Environmental Protection Agency for these products.

Ceiling Fan Label Content (305.13): The proposed amendments would require Ceiling Fan labels to display an estimated annual energy cost based on six hours of use per day and eleven cents per kWh.

Television Labels (305.17): The proposed amendments would clarify the television labeling provisions by indicating that manufacturers of televisions with screen sizes of nine inches or fewer (measured diagonally) may print or affix the EnergyGuide label on the product package.[50]

Catalog Requirements (305.20): The proposed amendments would require Web site sellers to post images of EnergyGuide and Lighting Facts labels online for the products they sell. They also revise disclosure requirements for paper and Web site catalogs.

IV. Regulatory Review

The Commission conducts scheduled reviews of its rules and guides in an effort to seek information about their costs and benefits as well as their regulatory and economic impact.[51] In addition to the specific issues discussed above, the Commission solicits general comments on, among other things, the economic impact of, and the continuing need for, the Rule; possible conflicts between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic, or other industry changes. If comments identify additional amendments that would improve the existing Rule, the Commission will consider issuing a supplemental notice seeking comments on such changes.

The Commission is interested in receiving data, surveys and other empirical evidence to support comments submitted in response to this notice. As part of the regulatory review, the Commission is particularly interested in receiving comments and supporting data in response to the following questions:

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to, or what significant costs has the Rule imposed on, consumers? Provide any evidence supporting your position.

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs to consumers?

(a) Provide any evidence supporting your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? Provide any evidence supporting your position.

(5) What benefits, if any, has the Rule provided to, or what significant costs,

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with EPCA (42 U.S.C. 6303(a)), § 305.4(a) states that labeling violations are assessed on a *per unit* basis.

[49] The per day per model basis is consistent with EPCA's enforcement provisions. *See* 42 U.S.C. 6302, 6303 and 16 CFR 305.4(a). It is also consistent with recent DOE enforcement guidance for the same and similar provisions. *See, e.g.,* DOE ''Guidance on the Imposition of Civil Penalties for Violations of EPCA Conservation Standards and Certification Obligations,'' *http://www.doe.gov/sites/prod/files/gcprod/documents/Penalty_Guidance_5_7_2010__final_%282%29.pdf.*

[50] 76 FR at 1044. The **Federal Register** notice accompanying the television labeling amendments to the Rule stated that televisions smaller than 9'' may be labeled on the box rather than on the screen. However, the final rule language did not reflect this.

[51] In comments responding to the Commission's recently published Ten-Year Regulatory Review Schedule (76 FR 41150 (July 13, 2011)), the Association of Home Appliance Manufacturers (AAHAM@) and Whirlpool Corporation (''Whirlpool''), urged the Commission to reconsider its earlier decision to accelerate review of the Appliance Labeling Rule. The two comments are available at *http://www.ftc.gov/os/comments/regulatoryreviewschedule/index.shtm.* AHAM asserted, and Whirlpool concurred, that the Commission should avoid frequent rule revisions unless existing requirements are outdated, overly burdensome, or deficient. However, the Rule warrants a comprehensive review at this time to allow the Commission to consider burden reductions associated with existing reporting requirements, explore ways to reduce the number of labels missing in showrooms, improve access to label information on retail Web sites, and consider whether additional consumer products should have energy labels. Therefore, the Commission has proceeded with the Rule's scheduled review. AHAM's comments also recommended that the Commission reduce duplicative FTC and DOE reporting requirements. The amendments proposed in the present Notice address these concerns. Finally, AHAM urged a reduction in the amount of information collected in DOE's certification reports. The FTC will provide AHAM's comments to DOE.

including costs of compliance, has the Rule imposed on businesses, particularly small businesses? Provide any evidence supporting your position.

(6) What modifications, if any, should be made to the Rule to increase its benefits or reduce its costs to businesses, particularly small businesses?

(a) Provide any evidence supporting your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

(9) What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions?

(a) Provide any evidence supporting the proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(10) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) Provide any evidence supporting your position.

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Provide any evidence concerning whether the Rule has assisted in promoting national consistency with respect to energy labeling.

(11) Are there foreign or international laws, regulations, or standards with respect to energy labeling that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified in order to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(c) Provide any evidence supporting your position.

(12) Are there any consumer products, not currently under review, that the Commission should consider for energy labeling?

(13) Is there any information not submitted in earlier proceedings that the Commission should consider about possible consumer electronics labeling? [52]

(a) Are there any new developments in test procedures for consumer electronics relevant to possible labeling requirements?

(b) Are there new consumer electronics products on the market that the Commission should consider for consumer energy labeling?

(c) Is there new information consumer electronics marketing or buying patterns that would aid the Commission in considering new labeling requirements?

(14) Is our business compliance guidance and consumer education about the Rules useful? Can they be improved? If so, how? Should the Commission print copies of these materials, or is a pdf at *www.business.ftc.gov* sufficient for business and consumer needs?

VI. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's proposed labeling requirements. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue final amendments.

All comments should be filed as prescribed below, and must be received by May 16, 2012. Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Appliance Labeling Amendments, Matter No. R611004'' to facilitate the organization of comments. Please note that your comment B including your name and your state B will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[53]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: *https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm* (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink *https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm.* If this Notice appears at *http://www.regulations.gov/#!home*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Appliance Labeling Amendments, Matter No. R611004'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives,

[52] 76 FR 1038 (Jan. 6, 2011) (**Federal Register** Notice on consumer electronics labeling).

[53] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9.(c).

whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before March 20, 2012, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

VII. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.3(c), the regulation that implements the Paperwork Reduction Act (PRA).[54] OMB has approved the Rule's existing information collection requirements through Jan. 31, 2014 (OMB Control No. 3084–0069). As described below, the proposed amendments modify (to a minor degree) the current Rule's existing labeling and reporting requirements.[55] Accordingly, the Commission is submitting this proposed Rule and an associated PRA Supporting Statement to OMB for review.

Manufacturer EnergyGuide Images Online: The proposed Rule requires manufacturers to post images of their EnergyGuide and Lighting Facts labels on their Web sites. Given approximately 15,000 total models[56] at an estimated five minutes per model,[57] this requirement will entail a burden of 1,250 hours.[58] Assuming that the additional disclosure requirement will be implemented by graphic designers at a mean hourly wage of $23.42 per hour,[59] the associated labor cost would approximate $29,300 per year.

Adhesive EnergyGuide Labels: The proposed amendments would require manufacturers of products with the EnergyGuide label to change information on the label and, in some cases, convert their labels from hang tags to adhesive labels. Under the current Rule, manufacturers routinely change labels to reflect new range and cost data, which is already accounted for by previous burden analyses for the Rule. Thus, such a change should not impose any additional burden.

Ceiling Fan, Clothes Washer, and Room Air Conditioner Labels: Changes to ceiling fan, clothes washer, and room air conditioner labels should impose no additional burden. Because the amendments will provide manufacturers with ample time to make such changes, manufacturers should be able to incorporate these changes into their normal schedules for package and label printing.

Catalog Disclosures: The Commission's past estimate of the Rule's burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (*see, e.g.,* 71 FR 78057, 78062 (Dec. 28, 2006)).[60] The proposed amendments do not alter that assumption as they would require just a one-time change of all products in affected catalogs. This one-time adjustment is consistent with, and accounted for by this prior assumption and the associated burden estimates for catalog sellers. Accordingly, the Commission believes no modification to existing burden estimates for catalog sellers is necessary.

Estimated annual non-labor cost burden: Any capital costs associated with the amendments are likely to be minimal.

The Commission invites comments that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on any proposed recordkeeping, disclosure, testing, or reporting requirements that are subject to OMB review under the PRA should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395B5167 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA''), with the final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the requirements specified in the proposed Rule will have a significant impact on these entities because, as discussed in the previous section, the proposed amendments involve formatting changes to labels and Web site changes that

[54] 44 U.S.C. 3501–3521.

[55] For reporting requirements, the amendments allow manufacturers to submit data to the DOE in lieu of the FTC. This will not affect the PRA burden because the Rule, as directed by the EPCA, will continue to require reporting to the FTC, even if manufacturers may fulfill that requirement by reporting to the DOE.

[56] This is an FTC staff estimate based on data submitted by manufacturers to the FTC pursuant to the current Rule.

[57] This estimate is based on FTC staff's general knowledge of manufacturing practices.

[58] Unlike retail Web sites that already have established Web pages for the products they offer, some manufacturers may have to create new Web pages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

[59] *See* U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States 2010 (May 2011), Bulletin 2753, Table 3 at 3–13 (''Full-time civilian workers,'' mean and median hourly wages), available at *http://www.bls.gov/ncs/ncswage2010.htm.*

[60] This assumption is conservative because the number of incremental additions to the catalog and their frequency is likely to be much lower after initial start-up efforts have been completed.

should not have a significant impact on affected entities, including small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed Rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission has initiated this rulemaking to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to improve the effectiveness of the current energy labeling program which will assist consumers in their purchasing decisions while minimizing industry burden. The legal basis for this Rule is the EPCA (42 U.S.C. 6291 *et seq.*).

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, the standards for various affected entities are as follows: refrigerator manufacturers—up to 1,000 employees; other appliance manufacturers—up to 500 employees; appliances stores—up to $10 million in annual receipts; television stores—up to $25.5 million in annual receipts, and light bulb manufacturers—up to 1,000 employees. The Commission estimates that fewer than 600 entities subject to the proposed Rule's requirements qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed Rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed labeling changes will involve some burdens on affected entities. However, the amendments should not have a significant impact on small entities. The proposed amendments would require manufacturers of products with the EnergyGuide label to change information on the label and, in some cases, convert their labels from hang tags to adhesive labels. Changes to ceiling fan, clothes washer, and room air conditioner labels should impose no additional burden because the proposed amendments should give manufacturers time to incorporate the changes into their normal label production schedules at minimal cost. Because the amendments would provide manufacturers with ample time to make such changes, manufacturers should be able to incorporate these changes into their normal schedules for package and label printing. Online sellers would have to make changes to ensure their Web sites provide the full EnergyGuide or Lighting Facts label. There should be no capital costs associated with the amendments. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. In fact, the proposed amendments should reduce duplication between FTC and DOE reporting requirements.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. As one alternative to reduce burden, the Commission could delay the effective date of the amendments to provide additional time for small business compliance. In addition, the Commission could consider different compliance dates, reporting requirements, or exemptions for small entities. Comments filed in response to this notice should identify small entities that are affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on small entities. The Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

IX. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

X. Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission proposes the following amendments to 16 CFR part 305:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In § 305.3, revise paragraph (a)(1) and (2) to read as follows:

§ 305.3 Description of covered products.

(a)(1) *Electric refrigerator* means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C).

(2) *Electric refrigerator-freezer* means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at

temperatures below 8 °F (−13.3 °C) which may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

* * * * *

3. In § 305.4, revise paragraph (b) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(b) Subject to enforcement penalties assessed per model per day of violation pursuant to 42 U.S.C. 6303 and adjusted for inflation by § 1.98 of this chapter, it shall be unlawful for any manufacturer or private labeler knowingly to:

* * * * *

4. Section 305.5 is revised to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

(a) Unless otherwise stated in paragraphs (b), (c), (d), or (e) of this section, the content of any disclosures required by this part must be determined in accordance with the procedures required by the Department of Energy as set forth in 10 CFR part 430, including test procedures in § 430.23, sampling procedures in § 430.24, laboratory accreditation in § 430.25 for information required to be submitted to the Department, and testing procedure waivers granted pursuant to § 430.27.

(b) For any representations required by this part but not subject to 10 CFR part 430 requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.

(c) For representations of the light output for general service light-emitting diode (LED or OLED) lamps, the Commission will accept as a reasonable basis scientific tests conducted according to IES LM79.

(d) Determinations of estimated annual energy consumption and estimated annual operating (energy) costs of televisions must be based on the procedures contained in the ENERGY STAR Version 4.2 test, which is comprised of the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug–2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010). Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. The Director of the Federal Register has approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the United States Environmental Protection Agency, ENERGY STAR Hotline (6202J), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or at *http://www.energystar.gov/ia/partners/product_specs/program_reqs/Televisions_Program_Requirements.pdf* [Telephone: ENERGY STAR Hotline: 1–888–782–7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue NW., Washington, DC 20580 [Telephone: 1–202–326–2830]; and at the National Archives and Records Administration, at *http://www.archives.gov/federal-register/cfr/ibr-locations.html* [Telephone: 1–202–741–6030].

(e) Representations for ceiling fans under section 305.13 must be derived from procedures in 10 CFR 430.23.

5. Section 305.6 is revised to read as follows:

§ 305.6 Manufacturer duty to provide labels.

For each covered product that a manufacturer distributes in commerce which is required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The labels must remain on the Web site for two years after the manufacturer ceases the model's production.

6. In § 305.7, revise paragraph (g) to read as follows:

§ 305.7 Determination of capacity.

* * * * *

(g) Clothes washers. The capacity shall be the tub capacity as determined according to appendix J1 to 10 CFR part 430, expressed as cubic feet rounded to the nearest tenth of a foot.

* * * * *

7. In § 305.8, paragraph (a)(1) is revised to read as follows:

§ 305.8 Submission of data.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each manufacturer of a covered product subject to the disclosure requirements of this part and subject to Department of Energy certification requirements in 10 CFR part 430 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 430 for that product, and that the Department has identified as public information pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at *https://regulations.doe.gov/ccms* as provided by 10 CFR 430.62.

(2) Manufacturers or private labelers of ceiling fans shall submit annually a report containing the brand name, model number, diameter (in inches), wattage at high speed excluding any lights, and airflow (capacity) at high speed for each basic model in current production.

(3) This section does not require reports for televisions and general service light-emitting diode (LED or OLED) lamps.

* * * * *

8. In § 305.11, paragraphs (d) and (e) are revised to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

* * * * *

(d) Label type. (1) Except for room air conditioners as provided in paragraph (d)(2), manufacturers or private labelers must affix the labels to the product in the form of an adhesive label before distribution of the product into commerce. The adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25″ × 38″) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the requirements of this paragraph.

(2) Labels for room air conditioners shall be printed on or affixed to the

principal display panel of the product's packaging.

(e) *Placement.* Manufacturers shall affix adhesive labels to the covered products before distribution into commerce in such a position that it is easily read by a consumer examining the product. The label generally should be located on the upper-right-front corner of the product's front exterior. However, some other prominent location, including a prominent location in the product's interior, may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the front, as long as this can be done with assurance that it will be readily visible and will not become dislodged.

* * * * *

9. Section 305.12, paragraphs (f)(8)(iii) and (g)(9)(iii) are revised to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(f) * * *

(8) * * *

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

* * * * *

(g) * * *

(9) * * *

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

10. In § 305.13 paragraph (a) is revised to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) *Ceiling fans*—

(1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the package's principal display panel with the following information in order from top to bottom on the label:

(i) Headlines and text as illustrated in the prototype and sample labels in Appendix L to this part;

(ii) the product's estimated annual operating cost based on 6 hours use per day and 11 cents per kWh.

(iii) The product's airflow at high speed expressed in cubic feet per minute and determined pursuant to § 305.5 of this part;

(iv) The product's electricity usage at high speed expressed in watts and determined pursuant to § 305.5 of this part as indicated in Ceiling Fan Label Illustration of appendix L of this part;

(v) The following statement shall appear on the label for fans fewer than 49 inches in diameter: ''Compare: 36'' to 48'' ceiling fans have an estimated yearly energy cost ranging from approximately $2 to $53.'';

(vi) The following statement shall appear on the label for fans 49 inches or more in diameter: ''Compare: 49'' to 60'' ceiling fans have an estimated yearly energy cost ranging from approximately $3 to $29.''; and

(vii) The ENERGY STAR logo as illustrated on the ceiling fan label illustration in Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(2) *Label size, color, and text font.* The label shall be four inches wide and three inches high. The label colors shall be process black text on a process yellow background. The text font shall be Arial or another equivalent font. The text on the label shall be black with a white background. The label's text size, format, content, and the order of the required disclosures shall be consistent with ceiling fan label illustration of appendix L of this part.

(3) *Placement.* The ceiling fan label shall be printed on or affixed to the principal display panel of the product's packaging.

(4) *Additional information.* No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

* * * * *

11. Section 305.17, paragraphs (d), (e), (e)(1), are revised and (h) is added to read as follows:

§ 305.17 Television labeling.

* * * * *

(d) *Label types.* Except as provided in paragraph (i), the labels must be affixed to the product in the form of either an adhesive label, cling label, or alternative label as follows:

* * * * *

(e) *Placement*—(1) In general. Except as provided in paragraph (i), all labels must be clear and conspicuous to consumers viewing the television screen from the front.

* * * * *

(h) *Labels for small televisions:* For television with screens measuring nine inches or less diagonally, manufacturers may print the label required by this section on the primary display panel of the product's packaging or affix a label to the packaging in lieu of affixing a label to the television screen or bezel. The size of the label may be scaled to fit the packaging size as appropriate, as long as it remains clear and conspicuous.

* * * * *

12. Section 305.20 is revised to read as follows:

§ 305.20 Paper catalogs and Web sites.

(a) *Covered products offered for sale on the Internet.* Any manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet Web site in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.*

(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, and televisions must display, for each model, an image of the label required for that product by this Part. The Web site may hyperlink to the image of the label using the icon depicted in Appendix L.

(ii) *Products not required to bear EnergyGuide or Lighting Facts labels.* All Web sites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent

lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product:

(A) *Showerheads, faucets, water closets, and urinals.* The product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.16.

(B) *General service fluorescent lamps, fluorescent lamp ballasts and luminaires and metal halide lamp fixtures.* A capital letter ''E'' printed within a circle.

(2) *Format.* The required Web site disclosures, whether label image, icon, or text, must appear clearly and conspicuously and in close proximity to the covered product's price on each Web page that contains a detailed description of the covered product and its price. The label and hyperlink icon must conform to the prototypes in Appendix L, but may be altered in size to accommodate the Web page's design, as long as they remain clear and conspicuous to consumers viewing the page.

(b) *Covered products offered for sale in paper catalogs.* Any manufacturer, distributor, retailer, or private labeler that advertises a covered product in a paper publication that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.*

(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All paper catalogs advertising covered products required by this Part to bear EnergyGuide or Lighting Facts labels illustrated in Appendix L (refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service fluorescent lamps, general service lamps, and televisions) must either display an image of the full label prepared in accordance with this Part, or make a text disclosure as follows:

(A) *Refrigerator, refrigerator-freezer, and freezer.* The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and TK hours of use per day. For more information, *visit www.ftc.gov/energy.*''

(B) *Room air conditioners and water heaters.* The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating ''Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a national average [electricity, natural gas, propane, or oil] cost of [$ __ per kWh, therm, or gallon]. For more information, visit *www.ftc.gov/energy.*''

(C) *Clothes washers and dishwashers.* The capacity of the model determined in accordance with § 305.7 and the estimated annual operating cost determined in accordance with § 305.5 and appendix K, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and 11 cents per kWh for electricity and $__ per therm for natural gas. For more information, visit *www.ftc.gov/energy.*''

(D) *General service fluorescent lamps or general service lamps.* All the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp's package, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost and life is based on 11 cents per kWh and 3 hours of use per day. For more information, visit *www.ftc.gov/energy.*'' For the ''Light Appearance'' disclosure required by § 305.15(b)(3)(iv), the catalog need only disclose the lamp's correlated color temperature in Kelvin (e.g., 2700 K). General service fluorescent lamps or incandescent reflector lamps must also include a capital letter ''E'' printed within a circle and the statement described in § 305.15(d)(1).

(E) *Ceiling fans.* All the information required by § 305.13.

(F) *Televisions.* The estimated annual operating cost determined in accordance with § 305.5 and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and 5 hours of use per day. For more information, visit *www.ftc.gov/energy.*''

(ii) *Products not required to bear EnergyGuide or Lighting Facts labels.* All Web sites advertising covered products not required by this Part to bear labels with specific design characteristics illustrated in Appendix L (showerheads, faucets, water closets, urinals, fluorescent lamp ballasts, and metal halide lamp fixtures) must make a text disclosure for each covered product identical to those required for Internet disclosures under § 305.20(a)(1)(iii).

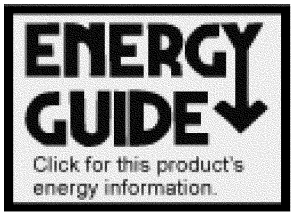
(2) *Format.* The required disclosures, whether text, label image, or icon, must appear clearly and conspicuously on each page that contains a detailed description of the covered product and its price. If a catalog displays an image of the full label, the size of the label may be altered to accommodate the catalog's design, as long as the label remains clear and conspicuous to consumers. For text disclosures made pursuant to 305.20(b)(1)(i) and (ii), the required disclosure may be displayed once per page per type of product if the catalog offers multiple covered products of the same type on a page, as long as the disclosure remains clear and conspicuous.

13. Revise Appendix L by revising Sample Icon 17, adding Sample Icon 18, and revising Ceiling Fan Illustration to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

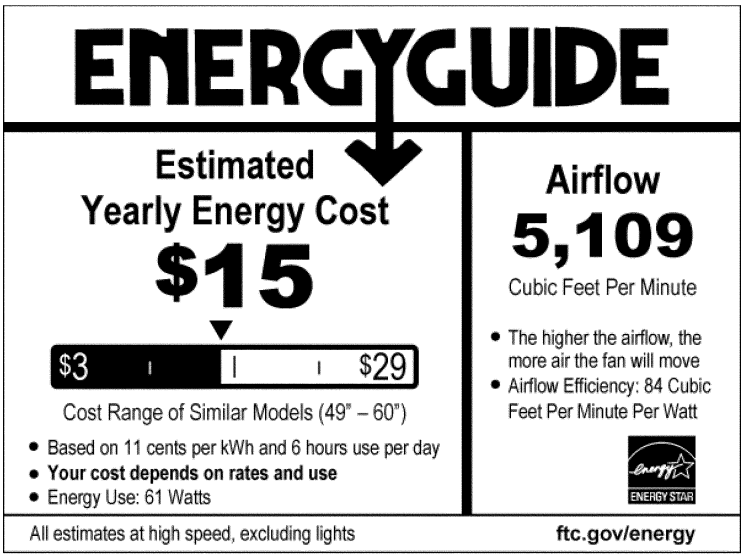
BILLING CODE 6750–01–P



SAMPLE ICON 17

SAMPLE ICON 18

* * * * *



Ceiling Fan Label Illustration

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–4865 Filed 3–14–12; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

23 CFR Part 771

[Docket No. FTA–2011–0056]

RIN 2132–AB03

Environmental Impact and Related Procedures

AGENCY: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) provides interested parties with the opportunity to comment on proposed changes to the joint Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regulations that implement the National Environmental Policy Act (NEPA). The proposed revisions would affect actions by FTA and project sponsors. The proposed revisions are intended to streamline the FTA environmental process for transit projects in response to the Presidential Memorandum on the subject ''Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review'' of August 31, 2011. The proposed categorical exclusions (CEs) would apply to FTA and improve the efficiency of the NEPA environmental reviews by making available the least intensive form of review for those actions that typically do not have the potential for significant environmental effects and therefore do not merit additional analysis and documentation associated with an Environmental Assessment or an Environmental Impact Statement. FTA and the FHWA invite comments on the proposals contained in this notice.

DATES: Comments must be received by May 14, 2012.

ADDRESSES: You may submit comments identified by the docket number (FTA–2011–0056) by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

U.S. Mail: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and docket number (FTA–2011–0056) or Regulatory Identification Number (RIN 2132–AB03) for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *http://www.regulations.gov,* where they will be available to Internet users. Please see the discussion of the Privacy Act below.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for viewing the docket or visit Docket Operations at the address above.

FOR FURTHER INFORMATION CONTACT: Antoinette Quagliata at (202) 366–4265 or Megan Blum at (202) 366–0463, Office of Planning and Environment (TPE), or Christopher Van Wyk at (202) 366–1733, or Scott Biehl at (202) 366–4011, Office of Chief Counsel (TCC), Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

This Notice of Proposed Rulemaking (NPRM) proposes a number of revisions to the procedures that govern how the Federal Transit Administration (FTA) complies with the National Environmental Policy Act (NEPA). The regulation proposed for revision, Part 771 of Title 23, Code of Federal Regulations (CFR), is a joint FTA and Federal Highway Administration (FHWA) regulation, but nearly all of the proposed revisions are written such that they would apply to actions by FTA. The proposed revisions that change FHWA's NEPA implementing regulations are a minor, non-substantive, revision to a footnote discussing supplementary guidance and two spelling corrections. The remaining proposed revisions, including ten proposed categorical exclusions (CEs), apply to FTA.

FTA's primary goal in developing this NPRM has been streamlining the environmental process, without any loss of its environmental value. In a Presidential Memorandum on the subject, ''Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review'' issued August 31, 2011, President Obama challenged the heads of Federal agencies to ''take steps to expedite permitting and review, through such strategies as integrating planning and environmental reviews; coordinating multi-agency or multi-governmental reviews and approvals to run concurrently; setting clear schedules for completing steps in the environmental review and permitting process; and utilizing information technologies to inform the public about the progress of environmental reviews as well as the progress of Federal permitting and review processes.'' This proposal is consistent with that direction, and also consistent with Executive Order 13571 issued on April 27, 2011, titled ''Streamlining Service Delivery and Improving Customer Service,'' through which President Obama challenged Federal agencies to develop and implement plans for, among other actions: ''improving the customer experience by adopting proven customer service best practices and coordinating across service channels (such as online, phone, in-person, and mail service);'' ''streamlining agency procedures to reduce costs and accelerate delivery, while reducing the need for customer calls and inquiries;'' and ''identifying ways to use innovative technologies to accomplish the customer service activities above, thereby lowering costs, decreasing service delivery times, and improving the customer experience.'' The general public, especially anyone affected or served by a transit project, is a primary ''customer'' served by FTA's environmental process. FTA therefore proposes to maximize the use of the Internet, in accordance with the President's Order, to deliver to the public expeditiously and efficiently the customer service provided by the NEPA documents and other environmental documents prepared by FTA. Recognizing that not every customer has access to the Internet, FTA will continue to use other means, consistent with the President's Executive Order, of providing public access to FTA's environmental documents.

In addition to the recent Presidential direction noted above, the Council on Environmental Quality's regulations for implementing the provisions of NEPA direct agencies to ''review their policies, procedures, and regulations * * * and revise them as necessary to insure full compliance with the purposes and provisions of the Act'' (40 CFR 1500.6). FTA's shared environmental procedures were last modified in 2009 with very minor revisions to comply with certain provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), but the procedures have not undergone a complete retrospective analysis by FTA since their creation in 1987. An NPRM proposing major revisions to this regulation was published on May 25, 2000, but was never finalized.

FTA recognizes that the use of CEs, whenever appropriate, is an easy and effective way to streamline the environmental process. However, it has been more than 10 years since FTA comprehensively considered the CEs listed in the environmental procedures that apply to transit and more than 20 years since changes to the CEs were made as a result of a comprehensive review. For this reason, FTA has now embarked on an initiative to update the CEs for particular types of proposed transit projects and other FTA proposed actions. The current CEs listed in paragraphs (c) and (d) of 23 CFR 771.117 are proposed to be FHWA CEs. FTA proposes to create a new section 771.118(c), the new list of FTA CEs being proposed as part of this rulemaking action, which would apply to FTA actions. The list of new CEs to be located in section 771.118(c) is intended to cover the actions that previously applied to FTA in section 771.117(c), though expanded for purposes of streamlining. If the new CEs are finalized, FTA expects to publish guidance to show how the list of CEs in section 771.117(c), which currently apply to FTA, is subsumed for FTA purposes by the new list at section 771.118(c). Consistent with past practice, FTA is proposing to continue to allow the categorical exclusion of other actions through documentation with language proposed for section 771.118(d), which mirrors the existing 23 CFR 771.117(d). FTA is proposing to delete, however, some items in the list of illustrative examples in section 771.117(d) from the new list in section 771.118(d) as they are duplicative of the new CEs being proposed for FTA in section 771.118(c).

According to the CEQ regulations (40 CFR § 1508.4), CEs are defined as ''a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' CEQ guidance on establishing CEs, issued in November 2010, reiterates CEQ's encouragement to Federal agencies to characterize the types of CE actions through broadly defined criteria, including clearly defined eligible categories and constraints, followed by examples. Accordingly, the CEs that FTA is proposing today are organized into ten defined categories of actions each accompanied by examples representing the types of FTA activities that fall within each category. The examples included are representative of the types of activities that fit within the defined criteria of the CE; they are not intended to limit the CE or to broaden it beyond those activities that do not typically, either individually or cumulatively, cause significant environmental effects.

The proposed CEs have been substantiated with supporting documentation, which includes, but is not limited to, comparative benchmarking and expert opinion. The supporting documentation includes FTA Findings of No Significant Impact (FONSI) for projects that fall within the ten broad categories. Comparative benchmarking provides support to the revised CEs by using the experience of other Federal agencies that conduct actions of similar nature, scope, and intensity. Additionally, FTA convened an expert panel to review and evaluate each of the revised CEs with respect to concept, applicability, and potential environmental effects. Information describing the basis for the CEs

determinations (i.e., the substantiation package) and information concerning the members of the expert panel, and their NEPA-related experience, can be found on the FTA Web site (*http://fta.dot.gov/about/12347.html*) and in the docket for this NPRM in Regulations.gov as described above.

FTA examined data for the FONSIs used to substantiate the CEs proposed for FTA use (23 CFR 771.118). Based on a snapshot of available 2008 and 2009 data, the average amount of time from Environmental Assessment (EA) initiation to FONSI signature was approximately 16.3 months. As this estimate is based on a constrained sample (ranging from facility improvements to streetcar and Bus Rapid Transit (BRT) implementation), FTA will track current and future projects in order to provide a more accurate assessment in the future. Currently, FTA anticipates an 85 percent time savings for future projects of similar scope to those found in the substantiation package under the proposed categorically excluded projects at 23 CFR 771.118.

This rulemaking action stems in part from the U.S. Department of Transportation's ''Retrospective Review and Analysis of Existing Rules'' in response to Executive Order 13563. Information on that process can be obtained either on DOT's Web site at *http://regs.dot.gov/RetrospectiveReview.htm* or at *Regulations.gov* under docket number DOT–OST–2011–0025.

What This NPRM Contains

The following section of this preamble includes a ''Section-by-Section Analysis'' of the revisions to the regulatory text proposed by this action. These explanations will aid the reader in understanding the reason behind each proposed regulatory change.

Following the Section-by-Section Analysis is the ''Regulatory Analysis and Notices'' section of the NPRM, which includes descriptions of the requirements that apply to the rulemaking process and information on how this rulemaking effort fits within those requirements.

The NPRM concludes with the actual proposed revisions to the regulatory text in the amendatory language required by the Office of the Federal Register. This language, if finalized, would modify the procedures that govern FTA's compliance with NEPA. FTA seeks public comment on the proposed regulatory revisions.

Section-by-Section Analysis

Section 771.105 Policy

A minor, non-substantive revision is proposed for the footnote to paragraph (a) to recognize the fact that both FTA and FHWA frequently update guidance relevant to the preparation of environmental documents. Thus, the phrase ''but is not limited to'' is proposed for addition to clarify this point, such that the introduction to supplementary guidance would read: ''FHWA and FTA have supplementary guidance on environmental documents and procedures for their programs. This guidance includes, but is not limited to * * *.'' In addition, the spelling of the word ''Web sites'' is proposed to be changed to ''Web sites.''

Section 771.109 Applicability and Responsibilities

One minor, non-substantive revision is proposed for this section: To correct the spelling of the word ''construction.''

Section 771.111 Early Coordination, Public Involvement, and Project Development

The revised procedures in paragraph (i) are proposed to provide FTA grant applicants with flexibility and efficiency in the public participation aspect of the environmental process. Paragraph (i)(1) would clarify that applicants may announce project milestones using either electronic or paper media. Currently, the use of electronic means is already practiced by some transit applicants, but FTA would note the option for all transit applicants. It is FTA's experience that providing various means for seeking public input in the environmental process, such as increasing the use of Web sites, adds value and flexibility that broadens public access and input and, thereby, ultimately expedites project review.

Paragraph (i)(2) formally presents the option of doing ''early scoping,'' which can be used to link the metropolitan and statewide transportation planning process mandated by 49 U.S.C. 5303–5304 with the NEPA process to provide a seamless transition from transportation planning to project-specific environmental evaluation. Major capital investments by FTA on fixed guideway transit projects under 49 U.S.C. 5309 (''New Starts'') have specific planning requirements that do not apply to FHWA programs nor to other FTA programs. Early scoping provides a logical connection between the planning-level alternatives analysis currently required by 49 U.S.C. 5309 and the environmental evaluation of alternatives required by NEPA. Early scoping produces a specific proposed action to be studied during the NEPA environmental process, and the process could also prove useful in providing a link between the planning and NEPA processes for projects not funded under the New Starts program. Steps for following the early scoping process are included in the proposed paragraph (i)(2).

To increase the public transparency of FTA environmental documents, the proposed paragraph (i)(3) encourages posting and distributing environmental process-related materials through publicly-accessible electronic means, including project Web sites.

FTA proposes through a new paragraph, (i)(4), to encourage the posting of all environmental impact statements (EIS) (draft and final) and environmental records of decision on a transit grant applicant's project Web site and maintaining it there until the project is constructed and operating. Additionally, the Environmental Protection Agency (EPA) is developing an electronic filing system for EIS documents, which will also allow for posting of EISs on the EPA Web site. FTA will provide a link on its Web site to direct the public to EPA's comprehensive EIS database. This NPRM would not change the current rules for distribution of hard copies of FTA environmental documents upon request, and the placement of such documents in public libraries and local government buildings within the project area.

Section 771.113 Timing of Administrative Activities

The proposal of a new section 771.118 for FTA CEs and the designation of the current section 771.117 for FHWA CEs require updates to existing references to 771.117. As such, paragraph (d)(1) is proposed to be revised to clarify that the reference to 771.117(d)(12) applies to FHWA and to add a reference to the newly proposed sections 771.118(c)(6) and (d)(3) that apply to FTA. Paragraph (d)(2) is proposed to be revised to change the current reference from 771.117(d)(13) to 771.118 (d)(4), as the paragraph refers to a transit action.

Section 771.115 Classes of Actions

Paragraph (a)(3) is proposed to be revised to clarify that the construction or extension of a fixed-guideway transit facility not located within an existing transportation right-of-way normally requires the preparation of an environmental impact statement. In addition, Bus Rapid Transit (BRT), as defined in the *National Transit Database—Glossary* was added to the

list of examples of such transit facilities. The current regulation, which this NPRM proposes to revise, could be interpreted to include a proposed transit project that would be located within an existing transportation right-of-way as an activity typically requiring an environmental impact statement. FTA is proposing to amend the current regulation because it has been the agency's experience that most transportation projects constructed within an existing transportation right-of-way do not have significant impacts on the environment; thus, they do not necessitate the preparation of an environmental impact statement. In fact, as noted in the analysis of section 771.118 below, certain transit facilities qualify for a CE when constructed predominantly within a transportation right-of-way. In any instance where potential unusual circumstances would cause such a project not to qualify for a CE, it would be reviewed with an EA or, if significant impacts are expected, an EIS.

Paragraph (b) is proposed to be revised to clarify that in the explanation of the list of CEs not normally requiring documentation, the reference to 771.117(c) applies to FHWA CEs and to add in a new reference, 771.118(c), to the location of the FTA CEs. Further, the explanation of CEs that require documentation is proposed to be revised to clarify that the reference to 771.117(d) applies to the FHWA CEs and to add in a new reference to 771.118(d) for the FTA CEs.

Section 771.117 FHWA Categorical Exclusions

The header for section 771.117, is proposed to be changed to ''FHWA categorical exclusions,'' because the CEs listed in section 771.117 would apply to FHWA actions. Conforming amendments to clarify that the list applies to FHWA are proposed that change ''the Administration'' to ''the FHWA'' in paragraphs (b), (c), and (d).

Section 771.118 FTA Categorical Exclusions

A new section, 771.118, is proposed to be added to 23 CFR that contains CEs applicable to FTA actions. The section will contain a paragraph (a) that describes and defines CE actions; a paragraph (b) that defines unusual circumstances; and a paragraph (e) that addresses the consideration for adding new CEs in the future. These three paragraphs mimic existing paragraphs (a), (b) and (e) at section 771.117. A new paragraph (c) will be added that describes the proposed FTA CEs. The section will also include a paragraph (d), which mimics the existing paragraph (d) at section 771.117, except in that it lists fewer examples in light of the separate lists and the more expansive list proposed for section 771.118(c), focusing on those most applicable to FTA. The CEs listed in paragraphs (c) and (d) of section 771.117 still may apply to multimodal projects that contain FHWA and FTA elements (such as the reconstruction of a highway lane within existing right-of-way with express bus service). FTA will issue guidance regarding the use of the new CEs for transit projects upon finalization of the FTA list at section 771.118(c).

Per CEQ guidance, the CEs are presented as general categories that include appropriate limitations and provide an informative list of examples. The CEs proposed in this NPRM are listed below along with a summary of how each was substantiated. A summary of the substantiations are available on the FTA Web site (*http://fta.dot.gov/about/12347.html*) and in the NPRM docket on Regulations.gov. The proposed CEs in paragraph (c) are:

''(1) Acquisition, installation, operation, evaluation, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: Utility poles; underground wiring, cables, and information systems; and power substations and transfer stations.'' This proposed CE, which would focus on discrete installation and improvements of utilities, would expand upon the current CE at 23 CFR 771.117(c)(2) (''Approval of utility installations along or across a transportation facility''). The additional activities (i.e., acquisition, operation, evaluation, and improvement) are consistent with other activities categorically excluded under the current FTA procedures and are supported by at least eight FTA FONSIs and in the established CEs of seven other federal agencies that conduct actions of a similar nature, scope, and intensity. FTA considered whether to propose a geographic limit on utility-related activity, but, based on the substantiating record for this CE, proposes that no such limit be included. FTA specifically seeks comment on this proposal. FTA also requests that commenters include evidence and demonstrate experience with the activity when possible.

''(2) Acquisition, construction, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: A multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.'' This CE, which would focus on the construction and improvements related to recreation, pedestrian or bicycle facilities, would expand upon the current CE at 23 CFR 771.117(c)(3) (''Construction of bicycle and pedestrian lanes, paths, and facilities''). The additional activities (i.e., acquisition, rehabilitation, improvement, and limited expansion) are within the realm of construction and, therefore, consistent with the current CE. The rationale for the proposed CE is supported by at least five FTA FONSIs and in the established CEs of three federal agencies that conduct actions of a similar nature, scope, and intensity. FTA considered whether to propose physical limitations on the activities included in this CE, such as restricting relevant activities to those within or adjacent to a transportation right-of-way or restricting by the scale of the activities, but, based on the substantiating record for this CE, proposes not to include such limitations. FTA specifically invites comments on this proposal in addition to general comments on the proposed CE. FTA also requests that commenters include evidence and demonstrate experience with the activity when possible.

''(3) Limited activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: Noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities including those that are listed or eligible for listing on the National Register of Historic Places when there are no adverse effects under the National Historic Preservation Act; retrofitting for energy conservation; and landscaping or re-vegetation.'' This CE, which would focus on activities designed to lessen harm to or enhance environmental quality, would consolidate and expand upon the current CE at 23 CFR 771.117(c)(6) (''The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction'') and (c)(7) (''Landscaping''). Expansion of activities within this category (i.e., those designed to lessen environmental harm and enhance and maintain the natural environment) is consistent with other activities categorically excluded under current procedures, and is supported in fact by at least nine FTA FONSIs, and in the established CEs of five federal agencies that conduct actions of a similar nature, scope, and intensity.

''(4) Planning and administrative activities which do not involve or lead

directly to construction, such as: Training and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; and engineering.'' This CE, which would include a variety of internal administrative activities that inherently have no potential for significant environmental impacts, would expand modestly on the current CEs at 23 CFR 771.117(c)(1) (''Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs, research activities as defined in 23 U.S.C. 307; approval of a unified work program and any finding required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476, engineering to define the elements of a proposed action or alternative so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system''); 23 CFR 771.117(c)(16) (''Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand''); and 23 CFR 771.117(c)(20) (''Promulgation of rules, regulations, and directives''). The proposed category identifies additional activities that are consistent with the established CEs of nine Federal agencies that conduct actions of a similar nature, scope, and intensity.

''(5) Discrete activities, including repairs, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation measures; and retrofitting existing transportation vehicles, facilities or structures.'' This CE, which would focus on discrete equipment, amenities, fittings, and improvements designed principally to secure passenger and pedestrian safety and convenience, would consolidate and expand slightly upon the current CEs at 23 CFR 771.117(c)(8) (''Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur''); at 23 CFR 771.117(c)(15) (''Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons''); and at 23 CFR 771.117(c)(21) (''Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses''). Expansion of activities within this category (i.e., installation and improvement of safety and communications equipment) is consistent with other activities categorically excluded under the current procedures, and it is supported with at least four FTA FONSIs and in the established CEs of seven federal agencies that conduct actions of a similar nature, scope, and intensity.

''(6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as scenic easements and historic sites for the purpose of preserving the site. This CE extends only to acquisitions that will not limit the evaluation of alternatives.'' The actions contemplated in this proposed CE have no potential for significant environmental impacts, as the scope is limited to potential acquisitions and transfers that avoid real property within or adjacent to environmentally sensitive areas to ensure the subsequent use of the property would avoid the potential to cause harm to the human environment, and avoid a substantial change in the functional use of the property as a change in use could pose potential impacts. This CE would expand on the current CEs at 23 CFR 771.117(c)(10) (''Acquisition of scenic easements''); 23 CFR 771.117(d)(12) (''Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed''); and at 23 CFR 771.117(d)(13) (''Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed''). Expansion of activities within this category including the acquisition activity, and identifying additional examples is consistent with other activities categorically excluded under the current procedures that are supported by at least five FTA FONSIs, and in the established CEs of seven federal agencies that conduct actions of a similar nature, scope, and intensity.

''(7) Acquisition, rehabilitation and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: Equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats, and people movers that can be accommodated by existing facilities or by new facilities that qualify for categorical exclusion.'' This CE, which would focus on acquisition and maintenance of public transportation vehicles and maintenance equipment to ensure passenger and pedestrian safety and to improve operations while not creating significant off-site impacts, would consolidate and expand slightly upon the current CEs at 23 CFR 771.117(c)(14) (''Bus and rail car rehabilitation''); 23 CFR 771.117(c)(17) (''The acquisition or lease (a) of vehicles where the vehicles can be accommodated by existing facilities or by new facilities which qualify for a CE; and (b) of existing facilities or other equipment''); and 23 CFR § 771.117(c)(19) (''Purchase or lease and installation of operating or maintenance equipment to be located within the transit facility where there are no substantial off-site impacts''). Expansion of activities within this category is consistent with other activities categorically excluded under the current procedures and is supported by at least four FTA FONSIs and in the established CEs of nine federal agencies

that conduct actions of a similar nature, scope, and intensity.

''(8) Maintenance and minimally intrusive rehabilitation and reconstruction of facilities that occupy substantially the same environmental footprint and do not result in a change in functional use, such as: Improvements to bridges, tunnels, storage yards, buildings, and terminals; and construction of platform extensions and passing track.'' This CE, which would focus on maintenance, rehabilitation, and reconstruction of facilities ensuring passenger safety and convenience while improving operations, would consolidate and expand slightly upon the current CEs at 23 CFR 771.117(c)(18) (''Routine maintenance and rehabilitation (a) of buses and rail cars; (b) of existing transportation facilities, such as pavement; bridges, terminals, storage yards and buildings, including ferry facilities, where there are no substantial changes in the footprint of the facilities or other disruptions; and (c) of track and rail-bed maintenance and improvements when carried out within the existing right-of-way''); CFR 771.117(d)(3) (''Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings''); and CFR 771.117(d)(9) (''Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users''). Expansion of activities within this category (rehabilitation of tracks and improvements to bridges and tunnels) is consistent with other activities categorically excluded under the current procedures and is supported by at least six FTA FONSIs and in the established CEs of seven federal agencies that conduct actions of a similar nature, scope, and intensity. The term ''footprint'' refers to the physical boundary of the referenced facility.

''(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations), is minimally intrusive, and requires no special permits, permissions, and uses a minimal amount of undisturbed land, such as: Buildings and associated structures; bus transfers, busways and streetcar lines within existing transportation right-of-way; and parking facilities'' This proposed CE, would focus on construction of facilities consistent with existing land use and zoning requirements, and would consolidate and expand slightly upon the current CEs at 23 CFR 771.117(d)(4) (''Transportation corridor fringe parking facilities''); 23 CFR 771.117(d)(8) (''Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic''); 23 CFR 771.117(d)(10) (''Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic''); and 23 CFR 771.117(d)(11) (''Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community''). Expansion of activities within this category (busways and streetcar lines within existing transportation right-of-way, including new lanes for buses, and parking facilities) is consistent with other activities categorically excluded under the current procedures and is supported by at least 39 FTA FONSIs and in the established CEs of three federal agencies that conduct actions of a similar nature, scope, and intensity. FTA considered whether to propose additional physical limitations on the activities included in this CE, but, based on the substantiating record for this CE, proposes not to include such limitations. FTA specifically invites comments on this proposal in addition to general comments on the proposed CE. FTA also requests that commenters include evidence and demonstrate experience with the activity when possible.

''(10) Development activities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: Police facilities, daycare facilities, public service facilities, and amenities. This CE would apply to those activities taking place within or at a public transportation facility that do not substantially expand the footprint, and thereby do not impact the natural or human environments. Joint development activities may increase user interactions at the transit facility, which could increase the productivity of the public transportation facility (e.g., economic development activities). These related but separate opportunities may increase public safety (e.g., police facilities), public transportation-user convenience (e.g., daycare facilities), or consolidate government activities (e.g., public service facilities). This proposed CE is supported by at least nine FTA FONSIs, and in an established CE of the U.S. Army. FTA considered whether to propose additional physical limitations on the activities included in this CE, but, based on the substantiating record for this CE, proposes not to include such limitations. FTA specifically invites comments on this proposal in addition to general comments on the proposed CE. FTA also requests that commenters include evidence and demonstrate experience with the activity when possible.

Section 771.119 Environmental Assessments

A new paragraph (k) is proposed regarding contracts with environmental contractors or consultants. FTA proposes that contract elements for the preparation of EA documents not be finalized until the process for informal scoping of the EA has been completed and the scope of the EA has been approved by FTA after consulting with the grant applicant. This change is intended to discourage the execution of contract elements for preparation of EA documents that are more extensive and costly to taxpayers than necessary, or take longer to prepare than necessary.

Section 771.123 Draft Environmental Impact Statements

Language is proposed for paragraph (d) to prevent grant applicants from executing contracts for preparation of EISs that are more extensive and costly to taxpayers than necessary, or take longer to prepare than necessary. FTA proposes that contract elements for the preparation of EIS documents not be finalized until formal scoping has been completed and the scope of the EIS has been approved by FTA after consulting with the grant applicant.

Paragraph (j) is proposed to be deleted as unnecessary. Even without this regulatory provision, FTA will ensure that every FTA draft EIS evaluates a proposed action (also called a locally preferred alternative) in sufficient detail, and that a planning-level Alternatives Analysis that lacks such detail is used as ''early scoping'' of the NEPA process and not as a draft EIS. As noted above, a planning-level Alternatives Analysis is currently required by 49 U.S.C. 5309 for New Starts and Small Starts projects.

Section 771.133 Compliance With Other Requirements

One minor change is proposed for this paragraph: The word ''Administration's'' would be replaced with ''FHWA's'' in the last sentence, given that the requirement referenced applies to FHWA, and not to FTA. FTA's approval of an environmental document constitutes its finding of compliance with the report requirements of 49 U.S.C. 5323(b), and FTA proposes to add language specific to FTA's requirement in this section.

Regulatory Analysis and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FTA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Orders 13563 and 12866 and DOT Regulatory Policies and Procedures

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. FTA and the FHWA have determined that this action is a significant regulatory action under section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). Therefore, this proposed rule was submitted to the Office of Management and Budget for interagency review. We also consider this proposal as a means to clarify the existing regulatory requirements. These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. FTA does anticipate that the changes in this proposal would enable projects to move more expeditiously through the federal review process and would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA and for ensuring that projects are built in an environmentally responsible manner. Under the existing regulations, approximately 90 percent of FTA's actions are CEs (specifically, sections 771.117(c) and (d)). FTA anticipates the percentage will increase especially where new categorically excluded actions are included (e.g., bus rapid transit projects within existing transportation right-of-way). FTA is not able to quantify the economic effects of these changes because the types of projects that will be proposed for FTA funding and their potential impacts are unknown at this time. But FTA requests comment, including data and information on the experiences of project sponsors, on the likely effects of the changes being proposed.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. We do not believe that this proposed rule would have a significant economic impact on entities of any size, but if your business or organization is a small entity and if adoption of proposals contained in this notice could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA and the FHWA have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FTA and the FHWA have also determined that this proposed action would not preempt any state law or state regulation or affect the states' ability to discharge traditional government functions. We invite state and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on state or local governments.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We have analyzed this proposed rule under Executive Order 13175 and believe that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. Therefore, a tribal impact statement is not required. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals may have on Indian communities.

National Environmental Policy Act

This proposed action would not have any effect on the quality of the environment under the National Environmental Policy Act of 1969 (NEPA). The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). CEs are one part of those agency procedures, and therefore establishing CEs does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency

responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing CEs does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000). Finally, the proposed action is intended to streamline the environmental process for reviewing proposed transit projects, including projects that will be environmentally beneficial.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 139; 40 CFR parts 1500–1508; and 49 CFR 1.48(b) & 1.51.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This notice does not propose any new or revise any existing information collections.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FTA and FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12630 (Taking of Private Property)

We have analyzed this proposed rule under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights. We do not anticipate that this proposed rule would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' dated May 18, 2001. We have determined that this is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We certify that this proposed rule is not an economically significant rule and would not cause an environmental risk to health or safety that may disproportionately affect children.

List of Subjects in 23 CFR Part 771

Environmental impact statements, Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Transit Administration and the Federal Highway Administration propose to amend 23 CFR part 771 as follows:

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

1. The authority citation for part 771 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303, 5301(e), 5323(b), and 5324; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.48(b) and 1.51.

2. Amend § 771.105 by revising footnote 1 of paragraph (a) to read as follows:

§ 771.105 Policy.

* * * * *

(a) * * * [1]

§ 771.109 [Amended]

3. Amend § 771.109 in paragraph (b) by replacing the misspelled word ''contruction'' with the word ''construction''.

4. Amend § 771.111 by revising paragraph (i) to read as follows:

§ 771.111 Early coordination, public involvement, and project development.

* * * * *

(i) Applicants for capital assistance in the FTA program:

(1) Achieve public participation on proposed projects through activities that engage the public, including public hearings, town meetings, and charettes, and seeking input from the public through the scoping process for environmental review documents. Project milestones may be announced to the public using electronic or paper media (e.g., newsletters, note cards, or emails) pursuant to 40 CFR 1506.6. For projects requiring EISs, an early opportunity for public involvement in defining the purpose and need for action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS. For other projects that substantially affect the community or its public transportation service, an

[1] FHWA and FTA have supplementary guidance on environmental documents and procedures for their programs. This guidance includes, but is not limited to: FHWA Technical Advisory T6640.8A, October 30, 1987; ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006; Appendix A of 23 CFR part 450, titled ''Linking the Transportation Planning and NEPA Processes''; and ''Transit Noise and Vibration Impact Assessment,'' May 2006. The FHWA and FTA supplementary guidance, and any updated versions of the guidance, are available from the respective FHWA and FTA headquarters and field offices as prescribed in 49 CFR part 7 and on their respective Web sites at *http://www.fhwa.dot.gov* and *http://www.fta.dot.gov,* or in hard copy by request.

adequate opportunity for public review and comment must be provided, pursuant to 49 U.S.C. 5323(b).

(2) May participate in early scoping as long as enough project information is known so the public and other agencies can participate effectively. Early scoping constitutes initiation of NEPA scoping while local planning efforts to aid in establishing the purpose and need and in evaluating alternatives and impacts are underway. Notice of early scoping must be made to the public and other agencies. If early scoping is the start of the NEPA process, the early scoping notice must include language to that effect. After development of the proposed action at the conclusion of early scoping, FTA will publish the Notice of Intent if it is determined at that time that the proposed action requires an EIS. The Notice of Intent will establish a 30-day period for comments on the purpose and need and the alternatives.

(3) Are encouraged to post and distribute materials related to the environmental review process, including but not limited to, NEPA documents, public meeting announcements, and minutes, through publicly-accessible electronic means, including project Web sites. Applicants are encouraged to keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Are encouraged to post all environmental impact statements and records of decision on a project Web site until the project is constructed and open for operation.

5. Amend § 771.113 by revising paragraph (d) to read as follows:

§ 771.113 Timing of Administration activities.

* * * * *

(d) * * *

(1) Exceptions for hardship and protective acquisitions of real property are addressed in paragraph (d)(12) of § 771.117 for FHWA and paragraphs (c)(6) and (d)(3) of § 771.118 for FTA.

(2) Paragraph (d)(4) of § 771.118 contains an exception for the acquisition of pre-existing railroad right-of-way for future transit use in accordance with 49 U.S.C. 5324(c).

* * * * *

6. Amend § 771.115 by revising paragraph (a)(3) and paragraph (b) to read as follows:

§ 771.115 Classes of actions.

* * * * *

(a) * * *

* * * * *

(3) Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way

* * * * *

(b) Class II (CEs). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c) for FHWA or pursuant to § 771.118(c) for FTA. When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d) for FHWA or pursuant to § 771.118(d) for FTA.

7. Amend § 771.117 by revising the heading of the section and by revising the first sentences of paragraphs (b), (c), and (d) to read as follows:

§ 771.117 FHWA Categorical Exclusions.

* * * * *

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper.

* * * * *

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and § 771.117(a) of this regulation and normally do not require any further NEPA approvals by the FHWA.

* * * * *

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FHWA approval.

* * * * *

8. Add § 771.118 to read as follows:

§ 771.118 FTA Categorical Exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions; do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following FTA CEs meet the criteria for CEs in the CEQ regulation (section 1508.4) and § 771.118(a) of this regulation and normally do not require any further NEPA approvals by FTA.

(1) Acquisition, installation, operation, evaluation, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as utility poles; underground wiring, cables, and information systems; and power substations and transfer stations.

(2) Acquisition, construction, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as a multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

(3) Limited activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities including those that are listed or eligible for listing on the National Register of Historic Places when there are no adverse effects under the National Historic Preservation Act; retrofitting for energy conservation; and landscaping or re-vegetation.

(4) Planning and administrative activities which do not involve or lead directly to construction, such as training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; and engineering.

(5) Discrete activities, including repairs, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as the

deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; and retrofitting existing transportation vehicles, facilities or structures.

(6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as scenic easements and historic sites for the purpose of preserving the site. This CE extends only to acquisitions that will not limit the evaluation of alternatives.

(7) Acquisition, rehabilitation and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for categorical exclusion.

(8) Maintenance and minimally intrusive rehabilitation and reconstruction of facilities that occupy substantially the same environmental footprint and do not result in a change in functional use, such as improvements to bridges, tunnels, storage yards, buildings, and terminals; and construction of platform extensions and passing track.

(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations), is minimally intrusive, and requires no special permits, permissions, and uses a minimal amount of undisturbed land, such as buildings and associated structures; bus transfers, busways and streetcar lines within existing transportation right-of-way; and parking facilities.

(10) Development activities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as police facilities, daycare facilities, public service facilities, and amenities.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FTA approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(4) Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the appropriate list of categorical exclusions in this section.

9. Amend § 771.119 by adding a new paragraph (k) to read as follows:

§ 771.119 Environmental assessments.

* * * * *

(k) For FTA actions: If the applicant selects a contractor to prepare the EA, the contractor's final scope of work for the preparation of the EA will not be determined until the informal scoping process is completed, and the scope of study has been approved by FTA in consultation with the applicant.

10. Amend § 771.123 by deleting paragraph (j) and by adding the following sentence at the end of paragraph (d) to read as follows:

§ 771.123 Draft environmental impact statements.

* * * * *

(d) * * *. For FTA actions, the contractor's final scope of work for the preparation of the EIS will not be determined until scoping has been completed, and the scope of study has been approved by FTA in consultation with the applicant.

§ 771.133 [Amended]

11. Amend § 771.133 in its final sentence by replacing the word ''Administration's'' with the word ''FHWA's'' and by adding the following text at the end of the paragraph: ''FTA's approval of an environmental document constitutes its finding of compliance with the requirements of 49 U.S.C. 5323(b) and 49 U.S.C. 5324(b).''

Issued on: March 7, 2012.

Peter Rogoff,

Administrator, Federal Transit Administration.

Victor M. Mendez,

Administrator, Federal Highway Administrator.

[FR Doc. 2012–6327 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130777–11]

RIN 1545–BK45

Treasury Inflation-Protected Securities Issued at a Premium; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations

(REG–130777–11), providing guidance on the tax treatment of Treasury Inflation-Protected Securities issued with more than a de minimis amount of premium.

DATES: The public hearing originally scheduled for March 28, 2012 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Monday, December 5, 2011 (76 FR 75829), announced that a public hearing was scheduled for March 28, 2012, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 1275 of the Internal Revenue Code.

The public comment period for these regulations expired on March 7, 2012. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Monday, March 12, 2012, no one has requested to speak. Therefore, the public hearing scheduled for March 28, 2012, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 2012–6212 Filed 3–14–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0109]

RIN 1625–AA08

Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Bogue Sound; Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period of a special local regulation for a recurring marine event in the Fifth Coast Guard District. This change applies only to the ''Crystal Coast Super Boat Grand Prix'' conducted on the waters of Bogue Sound near Morehead City, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event, which has been rescheduled from the fourth or last Sunday in September to the third Saturday and Sunday in September. This regulation would close a portion of the waters of Bogue Sound to vessel traffic during the boat race.

DATES: Comments and related material must be received by the Coast Guard on or before April 16, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0109 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0109), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0109'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0109'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1233, which authorizes the Coast Guard to define special local regulations for specified areas on navigable waters.

The purpose of this rulemaking is to ensure the safety of life on navigable waters during marine events and provide the marine community the opportunity to comment on regulated area locations, size, and length of time the special local regulation will be active.

Background

On September 15–16, 2012 from 10 a.m. to 4 p.m. East Coast Extreme Corporation will sponsor ''The Crystal Coast Super Boat Grand Prix'' on the waters of Bogue Sound adjacent to Morehead City, North Carolina. This special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with a powerboat race. The Captain of the Port North Carolina has determined powerboat races in close proximity to other watercraft and waterfront infrastructure pose significant risk to public safety and property. The likely combination of large numbers of recreational vessels, powerboats traveling at high speeds, and large numbers of spectators in close proximity to the event area poses risks that could result in serious injuries or fatalities. Special local regulations are in effect annually, defining a buffer or regulated area that prohibits vessels or persons from entering the race course. The regulated area that encompasses the event location will help ensure the safety of persons and property during the power boat race and minimize associated risk.

The regulations at 33 CFR § 100.501 lists recurring marine events within the Fifth Coast Guard District and marine event dates. The Table to § 100.501 identifies marine events by Captain of the Port zone. This particular marine event is listed in the Table to § 100.501 (d.)3.

The regulation in the Table to § 100.501 line (d.)3 indicates the Crystal Coast Super Boat Grand Prix would normally take place this year on September 23, 2012. This regulation temporarily changes the event date for this year to September 15–16, 2012.

To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event. The regulation at 33 CFR 100.501 would be enforced from 10 a.m. to 4 p.m. on September 15–16, 2012; vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Proposed Rule

The Coast Guard is proposing to temporarily suspend the regulation listed at line No. (d.)3 in Table to § 100.501 and will insert a new temporary regulation at Table to § 100.501 line No. (d.)5. This change will reflect a new date for this year's marine event, i.e. September 15–16, 2012. This change is needed to accommodate the change in date of the annual Crystal Coast Super Boat Grand Prix. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

This safety zone will restrict vessel movement on the specified waters of Bogue Sound adjacent to Morehead City, North Carolina. The regulated area will be established in the interest of participant safety during the ''Crystal Coast Super Boat Grand Prix'' and will be enforced from 10 a.m. to 4 p.m. on September 15–16, 2012. The Coast Guard, at its discretion and when practical, will allow the passage of vessels. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel is given permission from the Patrol Commander to transit.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation will restrict access to the area, the effect of this rule will not be significant because the regulated area will be in effect for a limited time, from 10 a.m. to 4 p.m., on September 15–16, 2012. The Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and the regulated area will apply only to the section of Bogue Sound adjacent to Morehead City. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz). Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. Vessel traffic will be able to transit the regulated area before and after the races, when the Coast Guard Patrol Commander deems it is safe to do so. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the specified portion of Bogue Sound from 10 a.m. to 4 p.m. on September 15–16, 2012.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for six hours each day for two days. The regulated area applies only to the section of Bogue Sound adjacent to Morehead City and traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BOSN3 Joseph Edge, Prevention Department, Sector North Carolina, 252–247–4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination, under figure 2–1, paragraph 34(h) of the Instruction, that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233.

2. From September 15, through September 23, 2012, in § 100.501, Table to § 100.501, suspend entry (d)3.

3. From 10 a.m. to 4 p.m. on September 15–16, 2012 in § 100.501, Table to § 100.501, add entry (d.)5 to read as follows:

§ 100.501–T05–0109 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

(d.) Coast Guard Sector North Carolina—COTP Zone				
Number	Date	Event	Sponsor	Location
*	*	*	*	* * *
5	September 15–16, 2012.	Crystal Coast Super Boat Grand Prix.	East Coast Extreme	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the westernmost shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.

Dated: February 20, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2012–6314 Filed 3–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–0123]

RIN 1625–AA08, AA00

Special Local Regulations and Safety Zone; War of 1812 Bicentennial Commemorations, Chesapeake Bay and Port of Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations and safety zone in the Chesapeake Bay and Port of Baltimore, Maryland for War of 1812 Bicentennial Commemorations activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after War of 1812 Bicentennial Commemorations events being planned for Baltimore, Maryland. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, the Patapsco River, and the Chesapeake Bay.

DATES: Comments and related material must be received by the Coast Guard on or before April 16, 2012. Requests for public meetings must be received by the Coast Guard on or before March 30, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0123 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0123), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0123'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0123'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before March 30, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The U.S. Department of the Navy is sponsoring War of 1812 Bicentennial Commemorations in the Chesapeake Bay and Port of Baltimore, Maryland. Planned events include the scheduled arrival of U.S. and foreign naval vessels, public vessels, tall ships and other vessels beginning on June 12, 2012 and the scheduled departure of those vessels ending on June 20, 2012. The Coast Guard anticipates a large spectator fleet for these events. Operators should expect significant vessel congestion along the arrival and departure routes. The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Baltimore and the waters of the Chesapeake Bay immediately prior to, during, and after the scheduled events. The regulations will provide for clear passage of participating vessels, a safety buffer around the participating vessels while they are in transit for the benefit of participants and spectators. The regulations will impact the movement of all vessels operating in specified waters of the Chesapeake Bay, Patapsco River, Northwest Harbor and the Inner Harbor.

It may be necessary for the Coast Guard to establish additional safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

With the arrival of War of 1812 Bicentennial Commemorations participants and spectator vessels in the Port of Baltimore for this event, it will be necessary to curtail normal port operations to some extent. The Coast Guard will attempt to minimize interference while still ensuring the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The War of 1812 Bicentennial Commemorations vessels are scheduled to arrive in the Captain of the Port (COTP) Baltimore Zone, as described in 33 CFR 3.25–15, beginning on June 12, 2012, following a route that includes specified waters of the Chesapeake Bay, Patapsco River, Northwest Harbor and the Inner Harbor. The War of 1812 Bicentennial Commemorations vessels are scheduled to depart the COTP Baltimore Zone, ending on June 20, 2012, following a route that includes specified waters of the Inner Harbor, Northwest Harbor, Patapsco River and the Chesapeake Bay. The safety of War of 1812 Bicentennial Commemorations vessels and spectators requires that spectator craft be kept at a safe distance from these routes during these vessel movements.

The Coast Guard proposes establishing special local regulations for the area in the Port of Baltimore through which the vessels will pass for the War of 1812 Bicentennial Commemorations arrival on June 13, 2012 and the War of 1812 Bicentennial Commemorations

departure on June 19, 2012. In addition to establishing special local regulations, we propose to establish temporary moving safety zones around War of 1812 Bicentennial Commemorations vessels greater than 100 feet in length overall, while operating in the navigable waters of the Chesapeake Bay or its tributaries, north of the Maryland—Virginia border and south of latitude 39°35′00″ N. This action is necessary to ensure the safety of participants and spectators immediately prior to, during, and following the War of 1812 Bicentennial Commemorations activities.

The regulations contained within this proposed rule are not intended to effect existing Naval Vessel Protection Zone regulations described in Title 33 CFR Part 165 (Subpart G).

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The primary impact of this proposed rule would be on vessels wishing to transit the affected waterways during the War of 1812 Bicentennial Commemorations vessels arrival beginning on June 12, 2012 and their departure ending on June 20, 2012. Although this proposed rule would prevent traffic from transiting a portion of the Inner Harbor, Northwest Harbor, Patapsco River and the Chesapeake Bay during these events, that restriction is limited in duration, affects only a limited area, and would be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself would severely hamper or prevent transit of the waterway, even absent this proposed rule, which is designed to ensure it is conducted in a safe and orderly fashion.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor and Patapsco River, and the Chesapeake Bay, in Maryland. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander, Coast Guard Sector Baltimore, 2401 Hawkins Pont Road, Building 70, Baltimore, Maryland, 21226–1791, Attention to: Waterways Management Division. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves establishing special local regulations issued in conjunction with a marine event, as described in figure 2–1, paragraph (34)(h), of the Instruction. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and categorical exclusion determination are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

Additionally, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule also involves establishing a temporary safety zone. A preliminary environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T05–0123 to read as follows:

§ 100.35T05–0123 Special Local Regulations for Marine Events; War of 1812 Bicentennial Commemorations, Chesapeake Bay and Port of Baltimore, MD.

(a) *Definitions.* (1) *''Captain of the Port Baltimore''* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to act on his behalf.

(2) *''Official Patrol Vessel''* includes all U. S. Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Sector Baltimore.

(3) *''War of 1812 Bicentennial Commemorations Vessel''* includes all vessels participating in War of 1812 Bicentennial Commemorations activities under the auspices of the U.S. Department of Homeland Security Application for Marine Event submitted for the War of 1812 Bicentennial Commemorations activities in Baltimore, Maryland and approved by the Captain of the Port Baltimore.

(4) *''War of 1812 Bicentennial Commemorations arrival''* is the movement of War of 1812 Bicentennial Commemorations vessels in orderly succession as they navigate designated routes in the Chesapeake Bay in Maryland and in the Port of Baltimore while inbound to Baltimore, Maryland on June 13, 2012.

(5) *''War of 1812 Bicentennial Commemorations departure''* is the movement of War of 1812 Bicentennial Commemorations vessels in orderly succession as they navigate designated routes in the Port of Baltimore and in the Chesapeake Bay in Maryland while outbound from Baltimore, Maryland on June 19, 2012.

(b) *Regulated areas.* The following regulated areas are established as special local regulations during the War of 1812 Bicentennial Commemorations in Baltimore, Maryland. All coordinates reference Datum NAD 1983.

(1) ''Arrival Area''. All waters of the Patapsco River, Northwest Harbor and Inner Harbor enclosed by:

Latitude	Longitude
39°15′41″ N	076°34′48″ W, to
39°15′05″ N	076°34′44″ W, and
39°14′08″ N	076°33′38″ W, to
39°12′46″ N	076°32′03″ W, to
39°10′ 25″ N	076°31′01″ W, to
39°12′06″ N	076°29′43″ W, to
39°13′22″ N	076°31′16″ W, to
39°15′40″ N	076°33′34″ W.

(2) ''Departure Area''. All waters of the Patapsco River, Northwest Harbor and Inner Harbor enclosed by:

Latitude	Longitude
39°15′41″ N	076°34′48″ W, to
39°15′05″ N	076°34′44″ W, and
39°14′08″ N	076°33′38″ W, to
39°12′46″ N	076°32′03″ W, to
39°10′25″ N	076°31′01″ W, to
39°12′06″ N	076°29′43″ W, to
39°13′22″ N	076°31′16″ W, to
39°15′40″ N	076°33′34″ W.

(c) *Special Local Regulations.* (1) All persons and vessels within the regulated areas must operate in strict conformance with any directions given by the Captain

of the Port Baltimore and leave the regulated areas immediately if the Captain of the Port Baltimore so orders.

(2) Unless otherwise directed by the Captain of the Port Baltimore, all vessels within the regulated areas shall be operated at the minimum speed necessary to maintain safe course.

(3) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the regulated areas, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing these regulated areas can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(4) The Captain of the Port Baltimore will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and will notify the public of any changes in the status of the regulated areas by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHZ).

(d) *Effective dates:* This rule is effective from June 13, 2012 through June 19, 2012.

(e) *Enforcement periods:* (1) ''Arrival Area''. Paragraph (b)(1) of this section will be enforced from 9 a.m. until 9 p.m. on June 13, 2012.

(2) ''Departure Area''. Paragraph (b)(2) of this section will be enforced from 6:30 a.m. until 3 p.m. on June 19, 2012.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0123 to read as follows:

§ 165.T05–0123 Safety Zone; War of 1812 Bicentennial Commemorations, Chesapeake Bay and Port of Baltimore, MD.

(a) *Definitions.* (1) *''Captain of the Port Baltimore''* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) *''Designated Representative''* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (b) of this section.

(3) *''War of 1812 Bicentennial Commemorations Vessels''* includes all vessels participating in War of 1812 Bicentennial Commemorations activities under the auspices of the U.S. Department of Homeland Security Application for Marine Event submitted for the War of 1812 Bicentennial Commemorations activities in Baltimore, Maryland and approved by the Captain of the Port Baltimore.

(b) *Regulated areas.* The following locations are a moving safety zone: (1) All waters within 500 yards of any War of 1812 Bicentennial Commemorations vessel which is greater than 100 feet in length overall, while operating in the navigable waters of the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″ N.

(2) All waters within 100 yards of any War of 1812 Bicentennial Commemorations vessel which is greater than 100 feet in length overall, while operating in the navigable waters of the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″ N.

(c) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0123. (1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) The Navigation Rules shall apply while within the safety zone described in paragraph (b).

(3) Persons and vessels intending to transit the area of the safety zone described in paragraph (b)(1) of this section shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Captain of the Port Baltimore or his designated representative.

(4) Entry into or remaining in the area of the safety zone described in paragraph (b)(2) of this section is prohibited unless authorized by the Captain of the Port Baltimore or his designated representative. Persons desiring to transit the area of the safety zone described in paragraph (b)(2) of this section must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone, unless required to maintain speed by the Navigation Rules.

(5) The Captain of the Port Baltimore will notify the public of any changes in the status of this zone by a Marine Safety Radio Broadcast on Marine Band Radio VHF–FM channel 22A (157.1 MHZ).

(6) The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective dates:* This section is effective from June 12, 2012 through June 20, 2012.

(e) *Enforcement periods:* This section will be enforced from 6 p.m. on June 12, 2012 until 9 p.m. on June 13, 2012, and from 6 a.m. on June 19, 2012 until 5 a.m. on June 20, 2012.

Dated: February 26, 2012.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2012–6222 Filed 3–14–12; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2011–7]

Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Public Hearings.

SUMMARY: The Copyright Office of the Library of Congress (''Office'') will be holding public hearings on the possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. In accordance with the Copyright Act, as amended by the Digital Millennium Copyright Act, the Office is conducting its triennial rulemaking proceeding to determine whether there are particular ''classes of

works'' as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses if they are prohibited from circumventing such technological measures. The first day of hearings will be dedicated to demonstrations of technology relevant to the rulemaking proceeding.

DATES: The first public hearing, confined to demonstrations of technology, will be held in Washington, DC on Friday, May 11, 2012 at 10 a.m. Public hearings will also be conducted in Los Angeles, California at 9 a.m. on Thursday, May 17, 2012 and Friday, May 18, 2012, and in Washington, DC at 9 a.m. on Thursday, May 31, 2012, Friday, June 1, 2012, and Monday, June 4 through Wednesday, June 6, 2012. Requests to testify must be received by 5 p.m. E.D.T. on Monday, April 2, 2012. *See* the **SUPPLEMENTARY INFORMATION** below for more information on the hearing dates and for additional information on other requirements.

ADDRESSES: The Los Angeles hearings will be held in the Moot Courtroom (Room 1310) of the University of California, Los Angeles, School of Law, 405 Hilgard Avenue, Los Angeles, CA. The Washington, DC round of public hearings will be held in the Copyright Hearing Room, LM–408 of the James Madison Building of the Library of Congress, 101 Independence Ave. SE., Washington, DC. *See* **SUPPLEMENTARY INFORMATION** for additional address information and other requirements.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400. Telephone (202) 707–8380; fax (202) 707–8366. Requests to testify may be submitted through the request form available at *http://www.copyright.gov/1201/hearing-request*.

SUPPLEMENTARY INFORMATION: On September 29, 2011, the Copyright Office published a Notice of Inquiry seeking comments in connection with its rulemaking pursuant to Section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. 76 FR 60398 (Sept. 29, 2011). On December 20, 2011, the Office published a Notice of Proposed Rulemaking listing the proposed exemptions and requesting responsive comments. 76 FR 78866 (Dec. 20, 2011). The classes of works proposed for exemption and the responsive comments and reply comments have been posted on the Office's Web site, along with the other notices published in the current rulemaking proceeding and a more complete statement of the background and purpose of the rulemaking. *See http://www.copyright.gov/1201/*.

The Office will be conducting public hearings in Los Angeles, California and Washington, DC to hear testimony relating to the proposed exemptions in this rulemaking. Interested parties are invited to submit requests to testify at these hearings. The dates for the hearings in Los Angeles, CA are May 17, 2012 and May 18, 2012. The dates for the Washington, DC hearings are May 31, June 1, 2012, and June 4 through June 6, 2012. Depending on the number of requests to testify received by the Copyright Office, it may not be necessary to conduct hearings on all of the available days. Updated information on the times and dates of the hearings may be found at *http://www.copyright.gov/1201/*. The hearings will be organized by subject matter, and while the Copyright Office will attempt to accommodate preferences for particular dates, such accommodations may not be possible.

These hearings will be organized into separate sessions on each of the proposed classes of works. Witnesses testifying in support of and in opposition to each class will testify as part of the same panel. Testimony shall consist of presentations of facts and legal argument, followed by questions from Copyright Office staff.

In addition to the hearings described above, the Office will be conducting a special ''Technology Hearing'' to give proponents and opponents of proposed classes of works an opportunity to conduct demonstrations of various technologies pertinent to the merits of the proposals. This hearing will be primarily factual in nature. Witnesses wishing to present demonstrations are asked to do so at this hearing rather than at the other hearings, in order to permit the other hearings to proceed on schedule. Witnesses will be responsible for providing any hardware or software necessary to conduct a demonstration. This hearing shall take place on Friday, May 11, 2012 in Washington, DC. The Office believes that conducting this hearing one week before the commencement of the other hearings will give Copyright Office staff and other witnesses an opportunity to take the technology demonstrations into account at the later hearings. The Office is exploring the possibility of audiovisual streaming of the Technology Hearing, at least to persons who will be witnesses at the later hearing and will be unable to attend the Technology Hearing. However, at this time the Office does not know whether that will be possible. Persons wishing to testify at the later hearings who wish to have access to such streaming if it is available should indicate their interest in their requests to testify.

All hearings will be open to the public, but seating will be limited. Witnesses and persons accompanying witnesses will be given priority in seating.

Requirements for persons desiring to testify: A request to testify must be submitted to the Copyright Office. All requests to testify must clearly identify:

- *For all hearings:*
  - The name of the person desiring to testify,
  - The organization or organizations represented, if any,
  - Contact information (address, telephone, and email),
  - The class of work on which you wish to testify (if you wish to testify on more than one proposed class of work, please state your order of preference).
- *For the May 11 Technology Hearing:*
  - A description of the technology you intend to demonstrate,
  - Identification of the proposed class(es) of works to which the technology is relevant,
  - Identification of any technical requirements (including hardware and software) for the demonstration,
  - An estimate of the length of time of the demonstration.
- *For the May 17–18 and May 31–June 6 hearings:*
  - A brief summary of your proposed testimony,
  - A description of any audiovisual material or demonstrative evidence, if any, that you intend to present,[1]
  - A description of any material you intend to distribute, if any, at the hearing,
  - The location of the hearing at which you wish to testify (Washington, DC or Los Angeles, CA),
  - Dates on which you wish to testify in order of preference,
  - Whether you wish to be given remote access to the May 11 Technology Hearing (if available).

[1] As noted above, demonstrations of technology should be presented at the May 11 hearing. Any witness wishing to present audiovisual material or demonstrative evidence at the later hearings must request permission to do so in their requests to testify and explain why it is more appropriate to present that material at the later hearings than to do so at the May 11 hearing. The Office will carefully scrutinize such requests.

Note: Because the agenda will be organized based on subject matter, the Office cannot guarantee that it can accommodate requests to testify on particular dates (apart from the Technology Hearing). Depending on the number and nature of the requests to testify, it is possible that the Office will not be able to accommodate all requests to testify. All persons who submit a timely request to testify will receive confirmation by email or telephone. The Office will notify all witnesses of the date and expected time of their appearance, and the time allocated for their testimony.

Addresses for requests to testify: Requests to testify must be submitted via the Office's Web site form located at *http://www.copyright.gov/1201/* and must be received by 5 p.m. E.D.T. on Monday, April 2, 2012. Persons who are unable to send requests via the Web site should contact Ben Golant, Assistant General Counsel, Office of the General Counsel at (202) 707–8380 to make alternative arrangements for submission of their requests to testify.

Form and limits on testimony at public hearings: There will be time limits on the testimony allowed for persons testifying that will be established after receiving all requests to testify. In order to avoid duplicative and cumulative testimony and to ensure that all relevant issues and viewpoints are addressed, the Office encourages parties with similar interests to select common representatives to testify on behalf of a particular position. A timely request to testify does not guarantee an opportunity to testify at these hearings. The Office stresses that factual arguments are at least as important as legal arguments. The hearings provide an opportunity to explain and, in some cases, demonstrate the factual basis of an argument. The Office encourages persons who wish to testify to provide demonstrations of particular problems or solutions as supplements to testimony. While testimony from attorneys who can articulate legal arguments in support of or in opposition to a proposed exempted class of works is useful, testimony from witnesses who can explain and demonstrate pertinent facts is strongly encouraged by the Office.

If audiovisual demonstrations or handouts will be used at any hearing, the Office requires submission of such materials to the Copyright Office 7 days prior to the hearing in order to make this information available to the other witnesses on the same panel. For the Technology Hearing, if a demonstration will consist of proprietary hardware or software, witnesses may need to provide representative handouts to be distributed to other witnesses prior to the hearing. Witnesses should assume that they will have to provide whatever electronic or audiovisual equipment is necessary for their presentations, although in particular cases the Office may be able to provide basic equipment (*e.g.,* a personal computer and a large monitor) or software. Persons intending to bring such equipment into the Library of Congress, *e.g.,* laptops, slide projectors, etc., are encouraged to give the Office advance notice and to arrive early in order to clear security screening by the Library police.

The Office intends to organize individual sessions of the hearings around particular or related classes of works proposed for exemption. If a request to testify involves more than one proposed exemption or related exemption, please specify, in order of preference, the proposed exemptions on which you would prefer to testify. Following receipt of the requests to testify, the Office will prepare an agenda of the hearings which will be posted at: *http://www.copyright.gov/1201/*. The Office will also provide additional information on directions and parking for all persons testifying at the Los Angeles, CA round of hearings. To facilitate this process, it is essential that all of the required information listed above be included in a request to testify.

Dated: March 12, 2012.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2012–6333 Filed 3–14–12; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2009–0696; A–1–FRL–9647–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Reasonably Available Control Technology (RACT) for the 1997 8–Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve several State Implementation Plan (SIP) revisions submitted by the State of Maine Department of Environmental Protection. These SIP revisions consist of a demonstration that Maine meets the requirements of reasonably available control technology (RACT) for oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA) with respect to the 1997 8-hour ozone standard as well as several new and revised VOC regulations. The intended effect of this action is to propose approval of Maine's RACT demonstration for satisfying the State's RACT SIP revision obligation as of September 15, 2006 and to propose approval of Maine's other submitted SIP regulations. This action is being taken in accordance with the CAA.

DATES: Written comments must be received on or before April 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0696 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2009–0696,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2009–0696. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.*regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly

to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1660, fax number (617) 918–0660, email *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame.[1] EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour ozone standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23857), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These designations became effective on June 15, 2004. In Maine, EPA designated two areas as 8-hour ozone nonattainment based on air quality monitoring data from 2001–2003. One area, the Portland nonattainment area located in southern Maine consisted of 57 coastal towns and cities located in York County (partial), Cumberland County (partial), Sagadahoc County (full) along with Durham, Maine, a town in Androscoggin County. The other area, the Midcoast area was located north of the Portland area and consists of 55 coastal towns and islands in Hancock, Knox, Lincoln, and Waldo Counties (all are partial Counties).

Subsequently, on August 3, 2006, Maine requested redesignation to attainment for the 8-hour ozone standard for the both areas. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved for the both areas. On December 11, 2006 (71 FR 71489), EPA approved ME DEP's redesignation request and as such the entire state was then designated attainment for the 1997 8-hour NAAQS.

Additionally, the entire State of Maine is part of the Ozone Transport Region (OTR) under Section 184(a) of the CAA. Section 184 of the CAA requires states in the OTR to submit a revision to their applicable State Implementation Plan (SIP) to include provisions that require the implementation of reasonably available control technology (RACT) for sources covered by a Control Techniques Guideline (CTG) and for all major sources. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category.

EPA requires under the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or through the establishment of new or more stringent requirements that represent RACT control levels. See ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2.'' 70 FR 71612 (Nov. 29, 2005). EPA has determined that States that have RACT provisions approved in their SIPs for the 1-hour ozone standard have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a State may establish new or more stringent requirements that represent RACT control levels, either in lieu of or in conjunction with a certification. In addition, a State may submit a negative declaration if there are no CTG sources or major sources of VOC and NO_X emissions in lieu of or in addition to a certification.

As noted in the Phase 2 Rule, the RACT submittal for the 1997 8-hour ozone standard was due from Maine on September 15, 2006. On March 24, 2008 (73 FR 15416), EPA issued Maine a finding of failure to submit for the 1997 8-hour ozone RACT requirement, essentially determining that Maine had failed to submit by the September 15, 2006 deadline a SIP revision demonstrating that sources specified under the CAA were subject to RACT. This finding started an 18-month sanctions clock, as well as a 24 month Federal Implementation Plan (FIP) clock. Maine submitted its SIP revision on August 27, 2009, and EPA determined the submittal to be complete on September 18, 2009, stopping the 18-month finding sanctions clock. Pursuant

[1] Today's action is in respect to the 1997 8-hour ozone standard and does not address the 2008 ozone standard.

to a consent decree entered in *Sierra Club* v. *Jackson* in the United States District Court for the District of Columbia (Civ. No. 1:11–cv–00035–GK), EPA shall, no later than May 31, 2012, sign a notice of the Agency's final rule promulgating a FIP addressing the RACT requirements for VOCs and NO_X as they relate to the 1997 8-hour ozone NAAQS for Maine (except for the NO_X RACT requirement in Northern Maine) addressing any VOC and NO_X RACT SIP revision for which the State was required to submit to EPA by the September 15, 2006 deadline and for which EPA has not signed an approval notice by May 31, 2012. The approvals proposed here with respect to Maine's RACT SIP revision obligation as of September 15, 2006, once finalized, will accomplish Condition 5 of the consent decree.

In addition, on October 5, 2006, EPA issued four new CTGs which states were required to address by October 5, 2007 (71 FR 58745). Also, on October 9, 2007, EPA issued three new CTGs which states were required to address by October 9, 2008 (72 FR 57215). Furthermore, on October 7, 2008, EPA issued four new CTGs which states were required to address by October 7, 2009 (73 FR 58841).

II. Summary of Maine's SIP Revision

On August 27, 2009, Maine submitted a SIP revision documenting RACT requirements for the 1997 8-hour ozone standard. In this SIP revision, Maine certifies that RACT requirements are being met for all non-CTG major stationary sources of VOCs and NO_X (those sources exceeding 50 tons per year (tpy) of VOCs, and 100 tpy of NO_X), and all pre-2006 CTGs with the exception of one category, cutback asphalt.[2] Maine's submittal states that the Maine regulations which have been approved by EPA as RACT for the 1-hour ozone standard also represent RACT for the 8-hour ozone standard, including any subsequent revisions to the ozone standard that maintain an 8-hour averaging period. The CTG categories, Maine's regulations including Code of Maine Rules citation, and the citations to EPA's prior approval of these rules are shown in Table 1.

TABLE 1—MAINE RACT CERTIFICATION

CTG	Maine regulation	EPA approval citation
Design Criteria for Stage 1 Vapor Control Systems—Gasoline Service Stations (November 1975, no EPA number).	CMR Chapter 118, Gasoline Dispensing Facilities Vapor Control.	60 FR 33730; June 25, 1995.
Control of Volatile Organic Emissions From Existing Stationary Sources—Volume II: Surface Coating of Cans, Paper, and Fabrics (May 1977, EPA–450/2–77–008).	CMR Chapter 129, Surface Coating Facilities	59 FR 31154; June 17, 1994.
	CMR Chapter 123, Paper Coating Regulation	57 FR 3946; February 3, 1992.
Control of Volatile Organic Emissions from Solvent Metal Cleaning (November 1977, EPA–450/2–77–022).	CMR Chapter 130, Solvent Cleaners	70 FR 30367; May 26, 2005.
Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products (June 1978, EPA–450/2–78–015).	CMR Chapter 129, Surface Coating Facilities	59 FR 31154; June 17, 1994.
Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling (June 1978, EPA–450/2–78–032).	CMR Chapter 129, Surface Coating Facilities	59 FR 31154; June 17, 1994.
Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (October 1977, EPA–450/2–77–026).	CMR Chapter 112, Bulk Terminal Petroleum Liquid Transfer Requirements.	61 FR 53636; October 15, 1996.
Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture (December 1977, EPA–450/2–77–032).	CMR Chapter 129, Surface Coating Facilities	59 FR 31154; June 17, 1994.
Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts-Rotogravure and Flexography (December 1978, EPA–450/2–78–033).	CMR Chapter 132, Graphic Arts-Rotogravure and Flexography.	59 FR 31154; June 17, 1994.
Control of Volatile Organic Emissions from Bulk Gasoline Plants (December 1977, EPA–450/2–77–035).	CMR Chapter 133, Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants.	60 FR 33730; June 29, 1995.
Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (December 1977, EPA–450–2–77–036).	CMR Chapter 111, Petroleum Liquid Storage Vapor Control.	57 FR 3946; February 3, 1992.
Control of Volatile Organic Compounds Leaks from Gasoline Tank Trucks and Vapor Collection Systems (December 1978, EPA–450/2–78–051).	CMR Chapter 120, Gasoline Tank Truck Tightness Self-Certification.	60 FR 33730; June 29, 1995.
Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (61 FR 44050, August 27, 1996).	CMR Chapter 134, Reasonably Available Control Technology for Facilities That Emit Volatile Organic Compounds.	65 FR 20749; April 18, 2000.
	Addressed by single source SIPs for Portsmouth Naval Shipyard.	65 FR 20749; April 18, 2000.
	Addressed by single source SIPs for Bath Iron Works	67 FR 35439; May 20, 2002.

[2] Maine subsequently submitted a SIP revision on September 11, 2009 consisting of amendments to CMR Chapter 131, Cutback Asphalt and Emulsified Asphalt, and EPA is proposing approval of the revised rule in today's action.

TABLE 1—MAINE RACT CERTIFICATION—Continued

CTG	Maine regulation	EPA approval citation
Control of Volatile Organic Compounds Emissions from Wood Furniture Manufacturing Operations (April 1996, EPA–453/R–96–007).	CMR Chapter 134, Reasonably Available Control Technology for Facilities That Emit Volatile Organic Compounds.	65 FR 20749; April 18, 2000.
	Addressed by single source SIPs for Moosehead Manufacturing's Facilities in Dover-Foxcroft and Monson.	67 FR 35439; May 20, 2002.
Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations (December 1997, EPA–453/R–97–004).	CMR Chapter 134, Reasonably Available Control Technology for Facilities That Emit Volatile Organic Compounds.	65 FR 20749; April 18, 2000.
	Addressed by a single source SIP for Pratt and Whitney.	67 FR 35439; May 20, 2002.

Regarding non-CTG sources, Maine is also certifying that the State's adopted VOC RACT regulation, CMR Chapter 134, Reasonably Available Control Technology for Facilities That Emit Volatile Organic Compounds, approved into the Maine SIP on April 18, 2000 (65 FR 20749) represents RACT for major non-CTG sources under the 1997 8-Hour ozone standard. For major sources of NOx, Maine is certifying that the State's adopted NOx RACT regulations CMR Chapter 138, Reasonably Available Technology for Facilities That Emit Nitrogen Oxides, approved into the Maine SIP on September 9, 2002 (67 FR 57148), represent RACT for major NOx sources under the 1997 8-hour ozone standard, and that CMR Chapter 148, Emissions From Smaller-Scale Electric Generating Resources, approved into the Maine SIP on May 26, 2006 (70 FR 30376), represents NOx RACT for the subject sources under the 1997 8-hour ozone standard.

Maine's August 27, 2009 SIP submittal also states that the State has determined that there are no applicable stationary sources of VOC in Maine and makes a negative declaration for the following CTG categories identified by EPA in CTG documents issued prior to 2006:

1. Surface Coating of Coils (May 1977, EPA–450/2–77–008)

2. Surface Coating for Insulation of Magnet Wire (December 1977, EPA–450/2–77–033)

3. Surface Coating of Automobiles and Light Duty Trucks (May 1977, EPA–450/2–77–008)

4. Surface Coating of Large Appliances (December 1977, EPA–450/2–77–034)

5. Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds (October 1977, EPA–450/2–77–025)

6. Manufacture of Synthesized Pharmaceutical Products (December 1978, EPA–450/2–78–029)

7. Large Petroleum Dry Cleaners (September 1982, EPA–450/3–82–009)

8. Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment (March 1984, EPA–450/3–83–006)

9. Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (December 1984, EPA–450/3–84–015)

10. Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry (August 1993, EPA–450/4–91–031)

11. Petroleum Refinery Equipment (June 1978, EPA–450/2–78–036)

12. Petroleum Liquid Storage in External Floating Roof Tanks (December 1978, EPA–450/2–78–047)

13. Manufacture of Vegetable Oils (June 1978, EPA–450/2–78–035)

14. Manufacture of Pneumatic Rubber Tires (December 1978, EPA–450/2–78–030)

15. Equipment Leaks from Natural Gas/Gasoline Processing Plants (December 1983, EPA–450/2–83–007)

16. Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins (November 1983, EPA–450/3–83–008).

In addition to the items discussed above, Maine's August 27, 2009 SIP submittal included a list of Maine's major sources of VOC and NO_X and the source's applicable RACT regulations. Maine has determined that all major sources of VOC and NO_X are meeting RACT. The submittal also included, as a single-source VOC RACT SIP, an amendment (A–459–71–D–A, also referred to as ''Amendment #2'') to the Air Emission License A–459–72–B–R issued to the McCain Foods USA, Inc., Tatermeal facility (Tatermeal) for incorporation into the Maine SIP. Amendment #2 incorporates by reference the conditions found in the Air Emission License A–459–72–B–R and amendment A–459–71–C–M to that License, which were issued to the Tatermeal facility by Maine pursuant to an EPA-approved SIP permitting program. While Maine's August 27, 2009 SIP submittal did not include copies of the Tatermeal Air Emission License A–459–72–B–R and amendment A–459–71–C–M to that License as elements of the State's SIP revision, EPA has added them to the administrative record supporting this proposed action.

On September 11, 2009, Maine submitted adopted amendments to CMR Chapter 131, Cutback Asphalt and Emulsified Asphalt, to EPA as a SIP revision. The amendments to CMR Chapter 131 were based on control measures recommended by the Ozone Transport Commission (OTC). Maine has determined that the amended CMR Chapter 131 was the only regulation required to be amended to fulfill Maine's RACT requirements for the 1997 8-hour ozone standard.

In addition to the items discussed above, Maine has also adopted several regulations based on model rules developed by the OTC. Maine believes these regulations establish a benchmark for RACT for the relevant source categories. EPA has previously approved the following regulations into the Maine SIP: (1) CMR Chapter 151, Control of VOC emissions from Architectural and Industrial Maintenance (AIM) Coatings, approved into the Maine SIP on March 17, 2006 (71 FR 13767); (2) CMR Chapter 153, Control of VOC emissions from Mobile Equipment Repair and Refinishing, approved into the Maine SIP on May 26, 2005 70 FR 30367); and (3) CMR Chapter 155, Control of VOC emissions from Portable Fuel Containers, approved into the Maine SIP on February 7, 2005 (70 FR 6352). Maine has determined that these regulations, as previously approved into the Maine SIP, still constitute as RACT for the respective source categories. Another such regulation, CMR Chapter 152, Control of Volatile Organic Compounds from Consumer Products, previously

approved into the Maine SIP on October 24, 2005 (70 FR 61382), has been determined to no longer represent RACT, and thus has been amended and was submitted to EPA as a SIP revision on February 28, 2008. Furthermore, Maine has made SIP submittals addressing some of the eleven new CTGs that have been issued since 2006.

In this rulemaking, EPA is acting on Maine's submittal for the purpose of determining the State's compliance with its RACT SIP revision obligation as of September 15, 2006 in relation to the 1997 8-hour ozone NAAQS. In addition, EPA is acting on the following received SIP submittals: [3]

1. On June 1, 2010, Maine submitted amendments to CMR Chapter 123, Control of Volatile Organic Compounds from Paper, Film and Foil Coating Operations, which addresses the Paper, Film, and Foil Coatings CTG (September 2007, EPA–453/R–07–003);

2. On October 26, 2010, Maine submitted newly adopted regulation CMR Chapter 161, Graphic Arts—Lithography and Letterpress Printing, which addresses the Offset Lithographic Printing and Letterpress Printing CTG (September 2006, EPA–453/R–06–002); and

3. On May 3, 2011, Maine submitted amendments to CMR Chapter 129, Surface Coating Facilities, which addresses the Flat Wood Paneling Coatings CTG (September 2006, EPA–453/R–06–004) and the Metal Furniture Coatings CTG (September 2007, EPA–453/R–07–005).

III. EPA's Evaluation of Maine's SIP Revision

EPA has evaluated Maine's VOC and NO_X regulations which the state certifies as meeting RACT for the 1997 8-hour ozone standard, and has found that they are generally consistent with the respective EPA guidance documents, and/or OTC model rules, referenced above. EPA previously approved the Maine rules, with the exception of the revised asphalt paving regulation, as meeting RACT for the 1-hour ozone standard (see 57 FR 3946, 59 FR 31154 and 60 FR 33730). In the absence of any information to the contrary, EPA agrees with Maine's determination that these rules continue to meet RACT for the 1997 ozone standard with the exception of the asphalt paving category.

Maine's Chapter 131, Cutback Asphalt and Emulsified Asphalt, initially incorporated the requirements of the Cutback Asphalt CTG (December 1977, EPA–450/2–77–037) and prohibited the use of cutback asphalt on public roads during the ozone season, but allowed for a number of exemptions. EPA previously approved Maine's Chapter 131 into the SIP on June 17, 1994 (59 FR 31154). Maine's revisions to Chapter 131 limit the VOC content of cutback and emulsified asphalt, eliminate exempted uses of cutback asphalt, and extend the scope of the regulation to all asphalt paving activities. The amendments to CMR Chapter 131 were based on control measures recommended by the OTC. EPA has evaluated Maine's rule and has found that it is consistent with EPA's 1977 cutback asphalt CTG, similar regulations adopted by other states in the region, and the recommended control measures of the OTC for emulsified and cutback asphalt paving. Therefore, EPA finds the revised Chapter 131 constitutes RACT for the 1997 ozone standard. Also, because the revised Chapter 131 rule is more stringent than the previously approved cutback and emulsified asphalt VOC requirements, the revised regulation satisfies the section 110(l) anti-backsliding requirements of the CAA.

EPA has evaluated Amendment #2, the single-source VOC RACT Air Emission License amendment for the McCain Foods USA, Inc., Tatermeal facility (Tatermeal) that Maine submitted for incorporation into the State's SIP. EPA finds that Amendment #2 is consistent with EPA guidance for major stationary sources of VOC (see EPA–450/2–78–022, May 1978 and EPA–453/R–95–010, April 1995). The Tatermeal permit covers the potato waste drying operations at the McCain Foods USA, Inc., Tatermeal facility in Presque Isle, ME. The air pollution sources at the facility consist of three dryers that dehydrate potato wastes to produce a material for use as a binder and nutritional supplement in animal feed. These dryers combust #6 fuel oil, a process that generates minimal VOC emissions. The drying of the potato waste, in contrast, generates a significant amount of VOC emissions, over 205 tons per year. Maine also estimates that a small amount of VOC emission results from the use of VOC-based solvent degreasers for cleaning equipment. The Tatermeal facility uses no more than 50 gallons of such solvent per year, which Maine has determined would result in approximately 0.2 tons of VOC per year. The Tatermeal facility is subject to the requirements of Maine's CMR Chapter 134, due to Tatermeal's potential to emit more than the CMR Chapter 134 applicability threshold of 40 tons of VOC per calendar year. The Tatermeal facility is meeting the RACT requirements of CMR Chapter 134 Section 3(A)(3) Option C, which consists of an examination of the technical and economical feasibility of control device equipment and pollution prevention options capable of reducing VOC emissions equivalent to or greater than a VOC reduction achieved by CMR Chapter 134 Section 3(A)(1) or Section 3(A)(2) and implementation of a program pursuant to CMR Chapter 134 Section 3(B)(3). As part of this examination, various VOC control options were considered, including a number of methods of incineration, condensation, wet and dry scrubbing, and biological treatment. All of the incineration methods considered were found to be technically or economically unfeasible. For example, the analysis performed by McCain Foods concluded that for incineration using a regenerative thermal oxidizer, the cost effectiveness would be almost $18,000 per ton of VOC removed. Similarly, the various methods of condensation, wet and dry scrubbing, and biological treatment considered were all found to be either technically or economically infeasible, with cost effectiveness ranging from about $8,600 to about $23,000 per ton of VOC removed. EPA agrees with Maine's determination that the installation and operation of add-on control equipment is not cost-effective for the potato drying operation.

Amendment #2 of the Tatermeal Air Emission License A–459–72–B–R restricts the facility's total annual VOC emissions to 208 tons per year on a twelve-month rolling total basis and limits the annual fuel use to 2,628,000 gallons of #6 fuel oil, with a sulfur content of no greater than 2.0% sulfur by weight, based on a twelve-month rolling total. Given that the installation of add-on control equipment is not cost-effective for the potato drying operation, EPA agrees that the provisions in Amendment #2 of the Tatermeal Air Emission License A–459–72–B–R constitute RACT for the Tatermeal facility.

As with the other SIP revisions in Maine's submittals that we propose to approve today, Amendment #2 satisfies EPA's enforceability analysis. We note, in particular, that although Amendment #2 incorporates two documents that

[3] EPA's March 24, 2008 failure to submit finding did not address Maine's obligation to submit RACT SIP revisions addressing the Metal Furniture Coating CTG and the Paper, Film, Foil Coating CTG (which were due October 9, 2008) nor the Lithographic Printing Materials and Letterpress Printing Materials CTG and the Flat Wood Paneling Coatings CTG (which were due October 5, 2007). Thus, EPA's actions regarding these CTGs today are in addition to EPA's action regarding Maine's submittal for the purpose of meeting the State's RACT SIP revision obligation as of September 15, 2006.

were not included in Maine's August 27, 2009 SIP submittal, Air Emission License A–459–72–B–R and Amendment A–459–71–C–M, EPA's evaluation of these documents indicates that they are consistent with the terms of Amendment #2. Additionally, although Amendment #2 only restricts the total annual amount and not the type of fuel oil combusted by the Tatermeal facility, enforceability of the VOC emission limitation in Amendment #2 is not affected because Tatermeal is required to use only #6 fuel oil under Condition 12(f) of Air Emission License A–459–72–B–R—a condition derived from a Best Practicable Treatment determination made pursuant to an EPA-approved SIP permitting program.

With respect to the CTGs issued in 2006 and later, Maine has submitted a number of regulations addressing some of these 11 CTGs. In this rulemaking, EPA is proposing to approve two amended regulations and one newly adopted regulation, covering a total of four of the 11 CTGs issued since 2006. The state must still address the remaining seven CTGs. EPA's evaluation of these regulations is presented below.

1. Maine's CMR Chapter 123, Paper Coating Regulation, was approved into the Maine SIP on February 3, 1992 (57 FR 3946), as meeting the May 1977 CTG requirements for controlling VOC emissions from surface coating of paper (Control of Volatile Organic Emissions from Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles and Light-Duty Trucks, EPA–450/2–77–008). Maine's revised CMR Chapter 123, Control of Volatile Organic Compounds from Paper, Film and Foil Coating Operations, submitted to EPA as a SIP revision on June 1, 2010, adds VOC emissions control requirements for film and foil surface coatings, as well as incorporating work practices to minimize VOC emissions. EPA finds that this regulation is generally consistent with the relevant EPA guidance (Control Techniques Guideline for Paper, Film, and Foil Coatings; September 2007, EPA–453/R–07–003). Also, because the revised Chapter 123 rule is more stringent than the previously approved paper, film, and foil coating operations VOC requirements, the revised regulation satisfies the section 110(l) anti-backsliding requirements of the CAA.

2. Maine's newly adopted CMR Chapter 161, Graphic Arts—Offset Lithography and Letterpress Printing, submitted on October 26, 2010, requires offset lithography and letterpress printing operations to control VOC emissions from inks, fountain solutions, and cleaning materials used in graphic arts. EPA finds that the emission limits, work practices, test methods, record keeping, and monitoring requirements in the rule are consistent with the relevant EPA guidance (Control Techniques Guideline for Offset Lithographic Printing and Letterpress Printing, September 2006, EPA–453/R–06–002).

3. Maine's CMR Chapter 129, Surface Coating Facilities, was approved into the Maine SIP on June 17, 1994 (59 FR 31154), as meeting RACT requirements under the 1-hour ozone standard for several CTG surface coating categories. CMR Chapter 129 addressed the requirements of the June 1978 flat wood paneling CTG (June 1978, EPA–450/2–78–032) and the requirements of the December 1977 metal furniture coatings CTG (December 1977, EPA–450/2–77–032). The amended CMR Chapter 129 rule was submitted to EPA as a SIP revision on May 3, 2011 to address the updated Flat Wood Paneling Coatings CTG, issued in September 2006 (September 2006, EPA–453/R–06–004), by expanding the type of paneling regulated, covering exterior siding and tileboard, lowering the applicability threshold of the rule, and clarifying the units of measurements by which VOC emission limits are expressed. The amended CMR Chapter 129 also addresses the Metal Furniture Coatings CTG, issued in September 2007 (September 2007, EPA–453/R–07–005), by specifying VOC limits for eight types of coatings used on metal furniture and lowering the applicability threshold of the rule. EPA finds that Maine's amended CMR Chapter 129 regulation is consistent with the updated CTGs for flat wood paneling and metal furniture coatings. Also, because the revised Chapter 129 rule is more stringent than the previously approved flat wood paneling and metal furniture coatings VOC requirements, the revised regulation satisfies the section 110(l) anti-backsliding requirements of the CAA.

EPA has also evaluated Maine's amended CMR Chapter 152 regulation, Control of VOC emissions from Consumer Products. CMR Chapter 152, as approved on October 24, 2005 (70 FR 61382), was based on an OTC model rule developed in 2001. This regulation initially limited the VOC content of consumer products in approximately 80 categories. The amended CMR Chapter 152 regulation reflects a more recent model rule developed by the OTC in 2006, which includes 18 additional categories of regulated consumer products, places limits on certain toxic compounds in some consumer products, streamlines the reporting requirements, and clarifies the sell-through period for products manufactured prior to the rule's effective date. EPA finds that the amended CMR Chapter 152 rule is consistent with EPA guidance and the 2006 OTC model rule for consumer products. In addition, because the revised Chapter 152 rule is more stringent than the previously approved consumer products VOC requirements, the revised regulation satisfies the anti-backsliding requirements of the CAA section 110(l).

IV. Proposed Action

EPA's review of Maine's SIP revisions indicates that these regulations and Amendment #2 of the Tatermeal Air Emission License A–459–72–B–R constitute RACT. EPA is proposing to approve Maine's RACT demonstration for meeting the State's SIP revision obligation as of September 15, 2006 in relation to the 1997 8-hour ozone standard. EPA is also proposing to approve the following Maine regulations and incorporate them into the Maine SIP: revised CMR Chapter 131, Cutback Asphalt and Emulsified Asphalt Regulation; revised CMR Chapter 123, Control of Volatile Organic Compounds from Paper, Film and Foil Coating Operations; revised CMR Chapter 129, Surface Coating Facilities; revised CMR Chapter 152, Control of Volatile Organic Compounds from Consumer Products; and newly adopted CMR Chapter 161, Graphic Arts—Lithography and Letterpress Printing. Finally, EPA is proposing to approve Amendment #2 of the Air Emission License A–459–72–B–R for the Tatermeal facility and incorporate Amendment #2 into the Maine SIP.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 8, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2012–6274 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–9645–8]

Notice of Public Meetings: Arsenic Small Systems Compliance and Alternative Affordability Criteria Working Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meetings.

SUMMARY: EPA is holding three meetings of the Arsenic Small Systems Working Group to discuss barriers to the use of arsenic treatment technologies and alternative affordability criteria. The first and second of these meetings will be held via Webcast. The third meeting will be held in Arlington, Virginia. Interested members of the public may participate in the two Webcasts via the Internet and may attend the third meeting in person.

DATES: The Working Group Webcast meetings will be held on March 20, 2012 (11:30 a.m. to 5:30 p.m. Eastern Time (ET)), and March 22, 2012 (1 p.m. to 5 p.m. ET). The third meeting will be held on April 4, 2012, at 9 a.m. ET and conclude on April 5, 2012, at 4 p.m. ET.

ADDRESSES: The first two meetings will be held via the Internet using a Webcast and teleconference. Persons wishing to participate in the Webcasts must register in advance as described in the **SUPPLEMENTARY INFORMATION** section. Registrants will receive an Internet access link and dial in number upon registration for the Webcast. The third meeting will be held at Potomac Yards South, first floor conference room located at 2777 South Crystal Drive Arlington, VA 22202. A government issued photo ID is required to obtain access to the building.

FOR FURTHER INFORMATION CONTACT: For questions about these specific meetings, contact Russ Perkinson, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency; telephone (202) 564–4901 or by email to *perkinson.russ@epa.govmailto*:.

SUPPLEMENTARY INFORMATION:

Congressional language contained in the Conference Report (H.R. 2055) accompanying the Consolidated Appropriations Act of 2012 directs the Environmental Protection Agency to convene an Arsenic Small Systems Working Group composed of representatives from States, small publicly owned water systems, local public health officials, drinking water consumers and treatment manufacturers to provide individual input and recommendations on barriers to the use of point-of-use and point-of-entry treatment units, package plant, and modular units, as well as alternative affordability criteria that give extra weight to small, rural, and lower income communities. Based upon input from the working group, the EPA will submit to Congress a report on actions to make alternative compliance methods more accessible to water systems and a report on alternative affordability criteria.

To participate in the Webcasts, you must register in advance at the following Web address: *https://www3.gotomeeting.com/register/127876830* for the March 20 Webcast on barriers to the use of arsenic treatment technologies; and *https://www3.gotomeeting.com/register/796765574* for the March 22 Webcast on alternative affordability criteria. The number of connections available for the Webcast is limited and will be available on a first come, first served basis. To participate in the April 4 through 5 meeting, you must register in advance no later than 5 p.m. ET on April 2, 2012, by email to *perkinson.russ@epa.gov* or phone at (202) 564–4901. Seating for the public is limited and will be available on a first come, first served basis for those persons registered. During the Webcasts and meetings, a public comment period will be held for those wishing to speak who have registered in advance. Individual comments should be limited to no more than three minutes and we ask that only one person present the statement on behalf of a group or organization. Individuals wishing to speak during the public comment period or individuals without Internet access seeking alternative means to participate in the Webcasts must contact Russ Perkinson at (202) 564–4901 or by email to *perkinson.russ@epa.gov* no later than 5 p.m. two business days prior to the meeting. Please specify the date of the meeting(s) to which the request applies.

Special Accommodations

To request special accommodations for individuals with disabilities, please contact Russ Perkinson at (202) 564–4910 or by email to *perkinson.russ@epa.gov*. Please allow at least five business days prior to the meeting to allow time to process your request.

Dated: March 8, 2012.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2012–6049 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

4O CFR Parts 260 and 261

[EPA–HQ–RCRA–2011–1014, FRL–9646–4]

RIN 2050–AG68

Revision to the Export Provisions of the Cathode Ray Tube (CRT) Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to revise certain export provisions of the cathode ray tube (CRT) final rule published on July 28, 2006 (71 FR 42928). The proposed revisions will allow the Agency to better track exports of CRTs for reuse and recycling. Additionally, EPA would gather more information on shipments of CRTs that are sent for reuse.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–1014 by one of the following methods:

www.regulations.gov: Follow the on-line instructions for submitting comments.

Email: Comments may be sent by electronic mail (email) to *RCRA-docket@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2011–1014.

Fax: Fax comments to: 202–566–9744, Attention Docket ID No. EPA–HQ–RCRA–2011–1014.

Mail: Send comments to: OSWER Docket, EPA Docket Center, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2011–1014. Please include two copies of your comments. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., Washington, DC 20503.

Hand delivery: Deliver two copies of your comments to: Environmental Protection Agency, EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. EPA–HQ–RCRA–2011–1014. Such deliveries are only accepted during the docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–RCRA–2011–1014. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OSWER Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the OSWER Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Marilyn Goode, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8800, (*goode.marilyn@epa.gov*).

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by today's action include all persons who export used cathode ray tubes (CRTs) and CRT glass for reuse or recycling. This action does not affect households or conditionally exempt small quantity generators (CESQGs). Annual costs to CRT exporters and EPA for the reporting and recordkeeping requirements range from $7,300 to $11,500 per year.

More detailed information on the potentially affected entities, industries, and industrial materials, as well as the economic impacts of this proposed rule, is presented in Section VIII of this preamble and in the Regulatory Impact Analysis available in the docket for this proposal.

What To Consider When Preparing Comments for EPA

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark all information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask for commenters to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If estimating burden or costs, explain methods used to arrive at the estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate any concerns and suggest alternatives.

• Make sure to submit comments by the comment period deadline identified above.

Preamble Outline

I. Statutory Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 3007, 6912(a), 6921, 6922, 6924, 6926, 6927, and 6938.

II. List of Abbreviations and Acronyms

CRT—Cathode Ray Tube
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
RCRA—Resource Conservation and Recovery Act
RIA—Regulatory Impact Analysis

III. What is the intent of this proposal?

Today's proposal would revise the conditional exclusions from the Resource Conservation and Recovery Act (RCRA) regulations that apply to persons who export cathode ray tubes (CRTs) for reuse or recycling. The existing requirements were first promulgated on July 28, 2006 (71 FR 42928). Since promulgation of these requirements, the Agency has realized the necessity of obtaining additional information on the export of this class of used electronics to better ensure their proper management. This notice is intended to propose changes to accomplish that goal.

IV. What is the scope of this proposal?

Today's proposal would affect only the export provisions of the CRT rule, and would not affect any requirements applicable to the domestic management of used CRTs. In this notice, EPA is proposing to add a definition of ''CRT exporter'' to the CRT rule. This proposed definition is consistent with the intent of the original CRT rule, which was to ensure that EPA received proper notification of all shipments of CRTs exported for reuse or recycling. We are also proposing to revise the notifications that must be submitted to EPA when CRTs are exported for reuse or recycling, and to require annual reports from exporters of CRTs for recycling. These proposed changes are described in section VI of this preamble. EPA is seeking comment only on the changes proposed today, and is not reopening any other part of the rule for comment.

V. Background

The Agency promulgated the CRT rule on July 28, 2006 (71 FR 42928). In that rule, EPA amended its regulations under RCRA to streamline the management requirements for used CRTs in an effort to encourage recycling and reuse of these materials rather than landfilling or possible incineration. The scope of the rule encompassed both used, intact CRTs and used, broken CRTs (i.e., glass that has been removed from its housing or casing with its vacuum released). Specifically, under 40 CFR 261.39, these materials are excluded from the definition of solid waste if certain conditions are met, including: (1) Used CRTs (intact or broken) sent for reuse and recycling are subject to the speculative accumulation requirements of 40 CFR 261.1(c)(8); (2) used, broken CRTs and CRT glass processors are subject to packaging and labeling requirements; and (3) CRT glass processors may not use temperatures high enough to volatilize lead. Persons who send CRTs for disposal are not eligible for the exclusion at 40 CFR 261.39, and may be required to handle their CRTs as hazardous waste from the point of generation, including the requirement to file a hazardous waste export notice under 40 CFR part 262 and the requirement to send the CRTs to a Subtitle C landfill.

In addition to these domestic requirements, the CRT rule also contains requirements at 40 CFR 261.39(a)(5) for used CRTs (intact or broken) exported for recycling. In order for these CRTs to be excluded from the definition of solid waste, the exporter must meet certain conditions. In particular, exporters of used CRTs for recycling must notify EPA of an intended shipment 60 days before the shipment occurs. Notifications may cover exports extending over a 12-month or shorter period. The notification must include contact information about the exporter, the recycler, and an alternate recycler, as well as a description of the manner in which the CRTs will be recycled, frequency and rate of export, means of transport, total quantity of CRTs to be shipped, and information about which transit countries the shipments will pass through.

When EPA receives this information, it notifies the receiving country and any transit countries. When the receiving country consents in writing to receive the CRTs, EPA forwards an Acknowledgement of Consent (AOC) to the exporter. The exporter may not ship the CRTs until he receives the AOC. If the receiving country does not consent or withdraws a prior consent, EPA will notify the exporter in writing, and the exporter may not allow any shipments or further shipments to proceed. Exporters must keep copies of notifications and AOCs for three years following receipt of the consent. Consent is not required from transit countries, but EPA notifies the exporter of any responses from these countries. Under 40 CFR 261.39(c), processed glass (i.e., glass that has been sorted or otherwise managed pursuant to the definition of ''CRT processing'' in 40 CFR 260.10) is subject only to the speculative accumulation requirements and exporters of such materials are not subject to the export notice requirements of 40 CFR 261.39(a)(5).

With respect to used intact CRTs that are exported for reuse, 40 CFR 261.41 requires exporters to submit a one-time notification to EPA with contact information and a statement that they are exporting the CRTs for reuse. They must keep copies of normal business records demonstrating that each shipment will be reused. Records must be retained for three years from the date of export. Examples of normal business records include contracts, invoices, shipping documents, and other documents that identify the planned disposition of the materials.

Since promulgation of the CRT rule in 2006, exports of CRTs, whether for reuse or recycling, have continued. As EPA implemented the rule, it became apparent that additional information is needed from the CRT exporter to better understand the flow of exported CRTs in order to ensure better management of these materials. To address this issue, EPA is today proposing certain changes to the CRT rule, which are explained in section VI below.

VI. Proposed Changes to the CRT Rule

A. Definition of ''CRT Exporter''

In the preamble to the final CRT rule, the Agency stated that ''persons taking

advantage of the exclusion that fail to meet one or more of its conditions may be subject to enforcement action and the CRTs may be considered to be hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA Section 3008(a) for all violations of the hazardous waste requirements occurring from the time a decision was made to recycle or dispose of the CRTs, through the time they are finally disposed of or reclaimed. EPA believes that this approach, which treats CRTs exhibiting a hazardous waste characteristic that do not conform to the conditions of the exclusion as hazardous waste from their point of generation, provides all handlers with an incentive to handle the CRTs consistent with the conditions. It also encourages each person to take appropriate steps to ensure that CRTs are safely handled and legitimately reused or recycled by others in the management chain'' (71 FR 42928 at 42943).

When used CRTs are exported for recycling or reuse, there may be several persons involved from the time that a decision is made to export these materials up to the time that the actual export occurs. The trade in used electronics can take place along a chain of businesses that collect, refurbish, dismantle, recycle, and reprocess used electronic products and their components. For example, a state (e.g., Texas or Wisconsin) may contract with recycling facilities to collect and recycle used electronics, including used CRTs. The recycling facilities may separate out equipment that can be reused, while unusable equipment is disassembled, sorted, and shredded. The reusable equipment may be sold or donated domestically or exported, sometimes through a broker. If recycling occurs, various component parts may be sent to subcontractors for further processing and returned to the manufacturing stream. Some of the processing (e.g., circuit boards, plastics) is performed abroad. For example, CRT glass may be cleaned and sorted in Mexico and then sent to India where it is made back into new CRTs.

If an exporter of used CRTs for recycling did not fulfill the export notice provisions of the CRT rule by notifying EPA, the receiving country would not receive notice that these materials were entering the country, and would be unable to provide consent. Similarly, if an exporter of used, intact CRTs filed a one-time reuse notice, but the CRTs were not functional and were subsequently recycled or even disposed, then EPA might rely on this mischaracterization without giving the receiving country the opportunity to consent to the shipments. In both of these situations, the competent authorities in the receiving countries would find it difficult to determine whether the imported CRTs were properly managed. Under the current EPA interpretation, intermediaries who participated in arranging for the CRT exports, as well as the actual entities that sent the CRT exports, may be liable under RCRA for exporting hazardous waste in violation of hazardous waste export requirements if they fail to fulfill the notice requirements, among other conditions, of the CRT rule.

To eliminate any potential confusion over who is responsible for fulfilling CRT exporter duties, including submitting the export notices required under 40 CFR 261.39(a)(5) (for CRTs exported for recycling) and 40 CFR 261.41 (for CRTs exported for reuse), the Agency is today proposing to add a definition of ''CRT exporter'' to 40 CFR 260.10. The proposed definition states that a CRT exporter is ''any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.'' The reference to ''any intermediary'' is modeled on the definition of ''primary exporter'' of hazardous waste in 40 CFR 260.10. As described above, there may be multiple parties who participate in deciding whether CRTs will be exported for recycling or reuse, and in arranging for the export of these materials. To avoid duplicative submissions, the Agency expects only one person to perform the exporter duties under 40 CFR 261.39(a)(5) and 40 CFR 261.41 (notifications to EPA, recordkeeping, and the annual reports that are proposed today and described below in this section of the preamble). However, all persons are jointly and severally liable for failing to comply with the exporter requirements. In other words, EPA has the authority to enforce the CRT rule export regulations against all persons associated with the export who meet the definition of ''CRT exporter.'' To avoid duplicative submittals, all relevant persons should assign these exporter responsibilities among themselves. This procedure is similar to the situation where several parties meet the RCRA definition of ''generator'' (see 45 FR 72024, 72026, October 30, 1980).

We are also proposing that the CRT exporter and any intermediary arranging for the export must be in the United States, because foreign-based entities add to the possibility of confusion over fulfilling the export responsibilities, and it is more difficult to establish EPA jurisdiction over such persons.

EPA emphasizes that this proposed definition is consistent with the intent of the CRT rule. The Agency requests comment on any alternative regulatory changes which might better accomplish that intent.

B. Proposed Changes to the Notification Required for Used CRTs Sent for Recycling

The conditional exclusion in 40 CFR 261.39(a)(5) require exporters to submit a notice to EPA when exporting used CRTs for recycling. EPA then forwards the notice to the receiving country to obtain the consent of that country. The notice submitted to EPA must contain, among other items of information, the estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported. The notice must also contain the estimated total quantity of CRTs (specified in kilograms) that the exporter expects to ship during the following 12 months or lesser period. However, there is currently no requirement to subsequently report the quantity of CRTs that were actually exported during the time period specified in the notice. Without this information, the Agency is unable to determine the actual quantity of CRTs that are exported in a given year, either by a particular exporter or in total. The notification requirements for exporters of hazardous waste under 40 CFR part 262 subparts E and H, for exporters of spent lead-acid batteries under 40 CFR 266.80(a)(6), and for exporters of universal waste under 40 CFR 273.20 or 273.40 all include a requirement to submit annual reports documenting the actual quantities of such materials that were exported. By reviewing annual reports, EPA can compare the amount of material that was actually exported to the estimates that were submitted earlier by these exporters when they provided the initial notification sent to the receiving country.

Today the Agency is proposing to add a requirement (40 CFR 261.39(a)(5)(x)) to require annual reports from exporters of used CRTs sent for recycling. In general, these reports would provide EPA with more accurate information on the total quantity of CRTs exported for recycling during the calendar year, and would also help determine whether CRTs exported for recycling are handled as commodities and not discarded. Additionally, EPA would be able to analyze shipments from specific exporters by comparing actual shipments in the annual report against proposed shipments in the export notice

to ensure that the shipments occurred under the terms approved by the receiving country. Finally, these reports would enable EPA to provide receiving countries with information that may assist them in determining the quantity of CRTs that were received in a particular country for recycling.

Under today's proposal, the exporter must provide, no later than March 1 of each year, a report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all CRTs exported for recycling during the previous calendar year. Such reports must also include the name, EPA ID number (if applicable), mailing and site address of the CRT exporter, the calendar year covered by the report, and a certification signed by the exporter which states: ''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.'' Under today's proposal, the annual reports would be submitted to the same EPA office to which the original notices were sent. Exporters would be required to keep copies of annual reports for a period of at least three years from the due date of the report.

The Agency solicits comment on whether requiring such a report is sufficient to determine the actual quantity of CRTs that are exported in a given year. We also request comment on whether additional information is needed to accomplish this goal, and on whether the goal could be accomplished with less information, or in some other manner than an annual report.

EPA is today proposing one other change to the notice required for CRTs exported for recycling. The current notice (40 CFR 261.39(a)(5)(i)(F)) requires the exporter to state the name and address of the recycler and any alternate recycler. Because CRTs are sometimes exported to more than one recycler in the receiving country, we are proposing to replace this language with a requirement that the exporter state the name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers. In this way, EPA will be able to provide the receiving country with the most accurate information available about the ultimate fate of the CRTs when they reach that country.

C. Proposed Changes to the Notification Required for Used, Intact CRTs Exported for Reuse

Currently, exporters who send used CRTs for reuse must submit a one-time notice with certain information under 40 CFR 261.41. The notice must be sent to the Regional Administrator. (The regulatory language does not specify which Regional Administrator, but it was the Agency's intent that the notice be sent to the Region from which the export takes place.) The notice must include a statement that the notifier plans to export used, intact CRTs for reuse. The notice must also include the notifier's name, address, and EPA ID number (if applicable), and the name and phone number of a contact person. Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

Since promulgation of this requirement, the Agency has become aware that some CRTs allegedly exported for reuse are actually recycled in the receiving country, sometimes under unsafe conditions. Failure to file the notice required for CRTs sent for recycling deprives the Agency of its ability to notify the receiving country about the CRTs to be imported into that country and obtain its consent. In order to require exporters to submit more complete information about the purported reuse of the exported CRTs over a specific period of time, we are proposing to add items to the reuse notice at 40 CFR 261.41 that are modeled on those required in the notice for CRTs exported for recycling. In addition, today's proposal would replace the one-time notice provision with a requirement that the notice be submitted periodically, to cover exports for reuse expected over a twelve month or lesser period. EPA believes that this additional information in the notice for reuse would greatly improve tracking, and thus better management, of these CRTS that are claimed to be exported for reuse.

Thus, under today's proposal, CRT exporters who export used, intact CRTs for reuse would be required to send a notification to EPA that would cover export activities extending over a twelve (12) month or lesser period. This notice would be sent to the same EPA office that receives notices for CRTs exported for recycling (the Office of Enforcement and Compliance Assurance). The notification would be in writing, signed by the exporter, and would have to contain:

- The name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs;
- The estimated frequency or rate at which the CRTs would be exported and the period of time over which they would be exported;
- The estimated total quantity of CRTs specified in kilograms;
- All points of entry to and departure from each transit country through which the CRTs would pass;
- A description of the approximate length of time the CRTs would remain in each country and the nature of their handling while there;
- A description of the means by which each shipment of the CRTs would be transported (e.g., mode of transportation vehicle, such as air, highway, rail, water, etc.), as well as the type(s) of container (drums, boxes, tanks, etc.);
- The name and address of the ultimate destination facility or facilities where the CRTs will be reused and the estimated quantity of CRTs to be sent to each facility, as well as the name of any alternate destination facility;
- A description of the manner in which the CRTs will be reused in the country that will be receiving the CRTs; and
- A certification signed by the exporter which states: ''I certify under penalty of law that the CRTs described in this notice are fully functioning or capable of being functional after refurbishment. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

Because of the additional items proposed for the reuse notice, the Agency believes it is appropriate to extend the coverage of this notice to a specified period of time, i.e., a twelve-month or lesser period. This time period is preferable to the one-time notice previously required because it ensures that the necessary information in the notice is more accurate and current.

The Agency solicits comment on whether the proposed notice could

effectively contain fewer items of information, or whether the goal could be accomplished in some other manner. In addition, the Agency requests comment on whether the proposed notice should be sent to the Regional Administrator (as is the case with 40 CFR 261.41) or to EPA Headquarters, where notices for CRTs exported for recycling are currently sent. The Agency believes that sending both types of notices to EPA Headquarters would facilitate retention and effective tracking of such notices, and will also be easier for those exporters who are required to submit notices for both reuse and recycling. However, we solicit comment on whether there are benefits in sending these notices to the EPA Regions.

The Agency also solicits comment on whether to require exporters of CRTs for reuse to accompany all shipments of such CRTs with copies of the notice submitted pursuant to 40 CFR 261.41. If such a requirement were finalized, the Agency would require such exporters to submit a complete notification to EPA before the initial shipment is intended to be shipped off-site (e.g., 60 days before the planned shipment), so that the exporter would have time to submit a copy of the completed notice with the shipment. In this way, if officials of U.S. Customs examined a shipment of used CRTs exported for reuse, they would be able to quickly obtain more information from the exporter or from EPA, if necessary. The Agency solicits comment on the benefits of such a requirement and whether such benefits would outweigh the costs to the exporter.

The Agency notes that 40 CFR 261.41(b) requires persons who export CRTs for reuse to keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. The documentation must be retained for a period of at least three years from the date the CRTs were exported. EPA solicits comment on whether to require specific types of documents to be retained, such as contracts, invoices, and/or shipping documents, and, if so, which documents must be retained. We also solicit comment on whether to require persons who export CRTs for reuse to provide a third-party translation of the documents into English if the documents are written in a language other than English and if EPA requests such a translation. In addition, we request comment on whether to require persons who export CRTs for reuse to provide contact information on an alternative destination facility for used, intact CRTs that are damaged in transit, or whether to require such persons to send the damaged CRTs back to the CRT exporter

Finally, the Agency also solicits comment on whether to add a requirement to submit annual reports for exporters of used, intact CRTs for reuse. These reports could be identical to the reports proposed for CRTs exported for recycling. They would enable EPA to learn the actual number of CRTs exported for reuse, which may be different from the number estimated in the original notice required under 40 CFR 261.41. EPA requests comment on whether this information would provide benefits which might outweigh the costs of submitting the report.

D. Other Issues

1. ''Bare'' CRTs

The current definition of ''used, intact CRT'' in 40 CFR 260.10 means a CRT whose vacuum has not been released. As we stated in the preamble to the 2006 final rule (71 FR 42942), this definition would encompass intact CRTs that are removed from the monitor with the vacuum still intact, even though the plastic housing or casing has been broken and removed. In that preamble, EPA stated that these materials resembled products more than wastes, and therefore should not be considered solid wastes unless disposed. If such ''bare'' CRTs are exported for reuse (i.e., placement into CRT monitors), they would not be subject to the export requirements of 40 CFR 261.39(a)(5), but would instead be subject to the reuse requirements of proposed 40 CFR 261.41. However, if exported for recycling, (presumably for glass or lead recovery), they would not be eligible for the exclusion in 40 CFR 261.39(c) for processed glass sent to a lead smelter or glass manufacturer because the CRTs have not been processed pursuant to the definition of ''CRT processing'' in 40 CFR 260.10. EPA solicits comment on whether ''bare'' CRTs removed from the monitor whose vacuum has not been released are likely to be exported for recycling rather than reuse and whether the regulation needs to be modified to reflect this situation.

VII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the Federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to the HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements.[1] RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program (see also 40 FR 271.1(i)). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations or that narrow the scope of the RCRA program.

B. Effect on State Authorization

Because of the Federal Government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States would not receive authorization to administer the Federal Government's export functions in this proposal, State programs would still be required to adopt those provisions in today's rule that are more stringent than existing Federal requirements to

[1] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the Federal program are made when the Agency authorizes state programs.

maintain their equivalency with the Federal program. Today's proposal contains amendments to 40 CFR 261.39 and 40 CFR 261.41 which would be more stringent if finalized. Therefore, states that have adopted these provisions, as well as states that have added CRTs to their universal waste programs under 40 CFR part 273, would be required to adopt these amendments. In addition, EPA strongly encourages States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E and H, the import/export manifest and OECD movement document related requirements in § 263.10(d), the import manifest and OECD movement document submittal requirements in §§ 264.12(a)(2), 264.71, 265.12(a)(2), and 265.71, or the management provisions for spent lead-acid batteries (SLABs) in 40 CFR part 266, subpart G. When a State adopts the export provisions in this rule, care should be taken not to replace Federal or international references with State terms.

VIII. Administrative Requirements for This Rulemaking

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the Economic Impacts Assessment for Proposed Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule. A copy of the analysis is available in the docket for this action. Annual costs to CRT exporters and EPA for the reporting and recordkeeping requirements range from $7,300 to $11,500 per year.

B. Paperwork Reduction Act (Information Collection Request)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2455.01.

EPA, under existing 40 CFR 261.39(a)(5)(F) and 40 CFR 261.41, is proposing to revise the notifications that must be submitted to EPA when CRTs are exported for reuse or recycling. EPA, under new 261.39(a)(5)(x), is also proposing to add a requirement that exporters of CRTs for recycling must submit an annual report to EPA. The purpose of these proposed revisions is to address certain implementation concerns with the current export provisions of the CRT rule. The current notice for CRTs exported for recycling requires the exporter to state the name and address of the recycler and any alternate recycler. Because CRTs are sometimes exported to more than one recycler in the receiving country, EPA is proposing to require that the exporter state the name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers.

EPA is proposing to expand the current reuse notice and model the notice on that required for CRTs exported for recycling. Instead of a one-time notice, EPA is proposing to require that reuse notices be submitted to cover a twelve month or shorter period. EPA is also proposing to add additional items of information to the notice, including contact information about the exporter and the destination facility, the frequency or rate at which the CRTs would be exported, the quantity of CRTs, transport information, and a description of the manner in which the CRTs will be reused in the receiving country. Furthermore, EPA is proposing to require that the exporter sign a certification that the CRTs are fully functioning or capable of being functional after refurbishment. EPA believes that the proposed expanded notice will help the Agency determine whether the exported CRTs have been handled as products that are actually reused in the receiving country.

Finally, EPA is proposing to add a requirement that exporters of CRTs for recycling submit an annual report documenting the actual numbers of CRTs exported during the previous calendar year. This number may differ from the estimate submitted in the original notice. This information will help ensure that the shipments occurred under the terms approved by the receiving country, and would enable EPA to provide receiving countries with information that may help them to determine the quantity of CRTs that were received in a particular country for recycling.

EPA has carefully considered the burden imposed upon the regulated community by the proposed information collection requirements. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum information collection requirements specified under the proposed rule are not met, neither the facilities nor EPA can ensure that CRTs are managed in compliance with the regulations.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule ranges from 229 to 259 hours, and the annual respondent cost for the new paperwork requirements is approximately $17,600 to $19,700. The estimated annual hourly burden ranges from 0.15 to 3.5 hours per response for the 138 respondents. The estimated total annual burden to EPA for administering the rule (e.g., receive, review, and process information required under the proposed rule) ranges from 55 to 97 hours, with a cost of approximately $2700 to $4700. Burden is defined at 5 CFR 1320.3(b).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA–HQ–RCRA–2011–1014. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 15, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by April 16, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are 138 individual CRT exporters. We have determined that the annual compliance cost of the rule, as a percentage of annual sales, is less than 0.1 percent. Based on the above, the Agency has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Because these direct costs are well below the $100 million annual direct cost threshold, this proposed rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA). This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations because of the Federal government's special role in matters of foreign policy.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Specifically, this proposed rule does not have Federalism implications because the State and local governments do not administer the export and import requirements under RCRA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this rule. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States. This proposed rule is intended to improve regulatory efficiency and increase accountability among all parties associated with the export of used CRTs whether sent for recycling and reuse, and does not directly affect the level of protection provided to human health or the environment in the United States.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As defined in Executive Order 13211, a ''significant energy action'' is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1) Is a significant regulatory action under Executive Order 12866 or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by OMB as a significant energy action. This proposed rule does not involve the supply, distribution, or use of energy and is not a significant regulatory action under Executive Order 12866. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Environmental Justice

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment in the United States. Rather, this proposed rule is intended to improve regulatory

efficiency and increase accountability among all parties associated with the export of used CRTs, whether for recycling or reuse.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Solid waste, Recycling.

RIN 2050–AG68: Revision to the Export Provisions of the Cathode Ray Tube (CRT) Rule

Dated: March 2, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, Parts 260 and 261 of title 40, Chapter I of the Code of Federal Regulations are proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding in alphabetical order the definition of ''CRT exporter'' to read as follows:

§ 260.10 Definitions.

* * * * *

CRT exporter means any person in the United States who initiates a transaction to send used CRTs outside the United States territories for recycling or reuse, or any intermediary in the United States arranging for such export.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

4. Section 261.39 is amended by revising paragraph (a)(5)(i)(F) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

(a) * * *

(5) * * *

(i) * * *

(F) The name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers.

* * * * *

(x) CRT exporters must file with EPA no later than March 1 of each year, a report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all CRTs exported during the previous calendar year. Such reports must also include the following:

(A) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the exporter which states:

''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.''

(xi) Annual reports must be submitted to the office specified in paragraph (ii) of this section. Exporters must keep copies of annual reports for a period of at least three years from the due date of the report.

* * * * *

5. Section 261.41 is amended by revising paragraph (a) to read as follows:

§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) CRT exporters who export used, intact CRTs for reuse must send a notification to EPA. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(2) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(3) The estimated total quantity of CRTs specified in kilograms.

(4) All points of entry to and departure from each transit country through which the CRTs will pass, a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(5) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(6) The name and address of the ultimate destination facility or facilities where the CRTs will be reused and the estimated quantity of CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities.

(7) A description of the manner in which the CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the CRTs.

(8) A certification signed by the exporter which states:

''I certify under penalty of law that the CRTs described in this notice are fully functioning or capable of being functional after refurbishment. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.''

* * * * *

[FR Doc. 2012–6276 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2012–0054; FRL–9647–8]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Oklahoma has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Oklahoma. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make

a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by April 16, 2012.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: March 7, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–6277 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0003, EPA–HQ–SFUND–2012–0062, 0063, 0064, 0065, 0066, 0067, 0068, 0069, 0070, 0071, 0146, and 0147; FRL–9647–4]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 56

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to: Add 10 sites to the General Superfund section of the NPL; remove the Construction Completion List column notation and footnote description; and correct the partial deletion notation. This rule also withdraws one site from proposal to the Federal Facilities section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before May 14, 2012.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Cedar Chemical Corporation	West Helena, AR	EPA–HQ–SFUND–2012–0062.
Fairfax St. Wood Treaters	Jacksonville, FL	EPA–HQ–SFUND–2012–0063.
Macon Naval Ordnance Plant	Macon, GA	EPA–HQ–SFUND–2012–0064.
Bautsch-Gray Mine	Galena, IL	EPA–HQ–SFUND–2012–0065.
EVR-Wood Treating/Evangeline Refining Company	Jennings, LA	EPA–HQ–SFUND–2012–0066.
Holcomb Creosote Co	Yadkinville, NC	EPA–HQ–SFUND–2012–0067.
Orange Valley Regional Ground Water Contamination	West Orange/Orange, NJ	EPA–HQ–SFUND–2012–0068.
Jackpile-Paguate Uranium Mine	Laguna Pueblo, NM	EPA–HQ–SFUND–2012–0069.
West Troy Contaminated Aquifer	Troy, OH	EPA–HQ–SFUND–2012–0070.
Circle Court Ground Water Plume	Willow Park, TX	EPA–HQ–SFUND–2012–0071.

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office (Mail Code 5305T), 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays).

Instructions: Direct your comments to the appropriate Docket number (see table above). The EPA's policy is that all comments received will be included in the public Docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web

site is an ''anonymous access'' system; that means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public Docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR Part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and

requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR Part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

The EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in

most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the construction completion list (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the sitewide ready for anticipated use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public Dockets located both at the EPA Headquarters in Washington, DC, and in the Regional offices. These documents are also available by electronic access at *www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue NW., EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1417.

Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mail Code 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mail Code 9T25, Atlanta, GA 30303; 404/562–8862.

Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mail Code 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mail Code SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail Code 8EPR–B, Denver, CO 80202–1129; 303/312–6484.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street Mail Code SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue Mail Code ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from the EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person; since the EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at *www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the

Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What documents are available for public review at the headquarters docket?

The Headquarters Docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What documents are available for public review at the regional dockets?

The Regional Dockets for this proposed rule contain all of the information in the Headquarters Docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How do I submit my comments?

Comments must be submitted to the EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (DC Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public Docket at *www.regulations.gov. http://www/epa/goc/edocket* as the EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, the EPA is proposing to add 10 sites to the General Superfund section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above with the exception of Cedar Chemical Corporation which has been designated as the state's one-time top priority site.

The sites are presented in the table below.

State	Site name	City/county
AR	Cedar Chemical Corporation	West Helena.
FL	Fairfax St. Wood Treaters	Jacksonville.
GA	Macon Naval Ordnance Plant	Macon.
IL	Bautsch-Gray Mine	Galena.
LA	EVR-Wood Treating/Evangeline Refining Company	Jennings.
NC	Holcomb Creosote Co	Yadkinville.
NJ	Orange Valley Regional Ground Water Contamination	West Orange/Orange.
NM	Jackpile-Paguate Uranium Mine	Laguna Pueblo.
OH	West Troy Contaminated Aquifer	Troy.
TX	Circle Court Ground Water Plume	Willow Park.

B. Withdrawal of Site From Proposal to the NPL

The EPA is withdrawing the proposal to add the Arnold Engineering Development Center site in Coffee and Franklin Counties, Tennessee to the NPL, because the site is being addressed under the Resource Conservation and Recovery Act (RCRA) program. Cleanup is progressing successfully, the migration of contaminated ground water is under control and measures have been taken that are protective of human health. The proposed rule can be found at 59 FR 43314 (August 23, 1994). Refer to the Docket ID Number EPA–HQ–SFUND–1994–0003 for supporting documentation regarding this action.

C. Proposal To Remove Construction Completion List Column Notation and Footnote Description

The EPA is proposing to amend the notes column and footnote description

of Appendix B to 40 CFR Part 300 to remove the note that references ''sites on the construction completion list.'' The EPA developed the Construction Completion List (CCL) (58 FR 14142, March 2, 1993) ''to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities.'' Notes were added to Table 1 (General Superfund Section) and Table 2 (Federal Facilities Section) of the NPL to identify those sites on the CCL. With today's easy public accessibility to the Internet and the availability of the most current data on the EPA's Web site, the EPA is proposing to remove the construction completion list note. Comments may be submitted to Docket number EPA–HQ–SFUND–2012–0146. For information on the construction completion list, please visit the EPA's Web site at *http://www.epa.gov/superfund/sites/query/queryhtm/nplccl.htm.*

D. Proposed Correction of Partial Deletion Notation in Table 1

The EPA is proposing to correct an error in the column note symbol used to designate sites with partial deletions in Appendix B to CFR Part 300. The correct column note symbol for a site with a partial deletion is ''P''. The Mouat Industries site in Montana has its partial deletion incorrectly designated by a column note symbol of ''* * * P''. In addition, this incorrect symbol was erroneously added to the footnote descriptions at the end of Table 1 as ''* * * P = Sites with deletion(s).'' The EPA is proposing to correct the column note for the Mouat Industries site by changing it to ''P'' and removing the erroneous footnote description. Comment may be submitted to Docket number EPA–HQ–SFUND–2012–0147.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this proposed rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this proposed rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this proposed rule?

This proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that the EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this proposed rule?

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to states or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

The EPA believes, however, that this proposed rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this proposed rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the Governor or a state official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this proposed rule?

This action does not have tribal implications, as specified in Executive Order 13175. Proposing a site to the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this proposed rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or

safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use,'' (66 FR 28355 (May 22, 2001)) requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this proposed rule?

No. This proposed rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this rule?

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 18, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2012–6328 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0174]

RIN 2127–AK88

Federal Motor Vehicle Safety Standards; Theft Protection and Rollaway Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In December 2011, NHTSA published a notice of proposed rulemaking (NPRM) that addressed safety issues arising from increasing variations of keyless ignition controls, and the operation of those controls. We received a petition from the Alliance of Automobile Manufacturers requesting an extension of the comment period. The petitioner argued that additional time was needed to review information that was placed in the docket late in the comment period. After considering the petition, we are extending the comment period by 10 days, from March 12, 2012, to March 22, 2012.

DATES: The comment period for the proposed rule published December 12, 2011, at 76 FR 77183, is extended. Comments must be received on or before March 22, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5559.

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

On December 12, 2011, NHTSA published in the **Federal Register** (76 FR 77183) a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 114, *Theft Protection and Rollaway Prevention.* In the NPRM, the agency addressed safety issues arising from increasing variations of keyless ignition controls, and the operation of those controls. We provided a 90-day comment period for the NPRM.

On February 29, 2012, the Alliance of Automobile Manufacturers (Alliance) sent a letter to NHTSA requesting that certain information, including vehicle owner questionnaires (VOQs) referenced in the NPRM, be placed in the docket. NHTSA sent a memorandum to the docket containing VOQ and crash information and also sent a copy to the Alliance. The memorandum was posted in the docket on March 6, 2012.

In a petition dated March 6, 2012, the Alliance requested a 30-day extension of the comment period. The petitioner argued that it and other interested parties seeking to comment need additional time to locate the VOQs, analyze the VOQs, and evaluate the other, newly docketed information. The Alliance stated that while the requested extension of the comment period may result in a slight delay in the rulemaking process, it contends that allowing commenters to generate comprehensive and responsive comments will significantly assist the agency in its decision making process.

After considering the petition from the Alliance, we have decided to extend the comment period by 10 days. We wish to facilitate the efforts of the petitioner and other interested persons to provide complete comments. We note, however, that since the agency initially provided a relatively long comment period, i.e., 90 days, interested persons have already had considerable time to evaluate the proposal. The VOQs, along with media reports, were cited as examples of the safety problems. We believe that a 10-day extension will ensure that interested persons have sufficient time to analyze the VOQ and crash information. Since the information was posted in the docket on March 6, all interested persons will, with the extension considered, have had more than two weeks to review the information. The Alliance did not provide any detailed information showing why a longer extension, such as the 30 days it requested, would be necessary.

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Issued: March 9, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–6269 Filed 3–12–12; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13, 17, and 402

[Docket No. FWS–R9–ES–2011–0099: FXES11150900000A2123]

RIN 1018–AY29

Endangered and Threatened Wildlife and Plants; Expanding Incentives for Voluntary Conservation Actions Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are considering proposals to amend the regulations that implement parts of the Endangered Species Act. By this notice, we are inviting public comment to help us identify potential changes to our regulations that would create incentives for landowners and others to take voluntary conservation actions to benefit species that may be likely to become threatened or endangered species. In particular, we seek comment on whether and how the Service can assure those who take such voluntary actions that the benefits of such voluntary conservation actions will be recognized as offsetting the adverse effects of activities carried out after listing by that landowner or others. This practice sometimes referred to as ''advance mitigation'' or ''pre-listing mitigation,'' is intended to encourage early conservation efforts that could reduce or eliminate the need to list species as endangered or threatened.

DATES: We will consider comments received or postmarked on or before May 14, 2012.

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Enter Keyword or ID box, enter FWS–R9–ES–2011–0099, which is the docket number for this notice. You may submit a comment by clicking on ''Submit a Comment.''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–ES–2011–0099; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments below for more details).

FOR FURTHER INFORMATION CONTACT: Jim Serfis, Chief, Office of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703–358–2171). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are considering whether and how we could revise our regulations to create incentives for landowners and others to take voluntary conservation actions to benefit species that may be likely to become threatened or endangered species, including revisions that could recognize the benefits of such conservation actions as offsetting the adverse effects of actions carried out after listing by that landowner or others. We request comments, information, and suggestions from the public, other concerned governmental agencies, the

scientific community, industry, private landowners, or any other interested parties to help us formulate any proposed regulation.

You may submit your comments and materials concerning this notice by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Background

On January 18, 2011, President Obama issued Executive Order 13563, which called for improvements in the nation's regulatory system to promote predictability and reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Pursuant to the Executive Order, the Department of the Interior published notices on February 25, 2011, and July 11, 2011, asking the public for suggestions as it prepared a plan for retrospective regulatory review. Representatives from State government, non-governmental groups and industries ranging from residential construction to wind energy, and to electric utilities recommended that the Department of the Interior update ESA regulations. Subsequently, the Department of the Interior published its final Plan for Retrospective Regulatory Review. That Plan identified a number of areas where changes in the ESA regulations could improve conservation effectiveness, reduce administrative burdens, create clarity and consistency for affected interests, and encourage partnerships, innovation, and cooperation. To achieve these goals, the Plan identified a need to clarify, expedite, and improve procedures for the development and approval of conservation agreements with landowners.

Currently, landowner agreements that provide regulatory assurances under the ESA take three principal forms: Habitat Conservation Plans (HCPs), Safe Harbor Agreements (SHAs), and Candidate Conservation Agreements with Assurances (CCAAs). Habitat Conservation Plans, which are required in order to secure a permit to take listed wildlife species incidental to otherwise lawful activities, set forth measures to be taken to mitigate the impacts of such authorized taking. Although HCPs must always cover one or more listed wildlife species, they may also cover unlisted species. Safe Harbor Agreements are voluntary agreements under which a property owner agrees to carry out conservation measures to benefit listed species without incurring any new or additional regulatory liability as a result of their voluntary action. Candidate Conservation Agreements with Assurances are voluntary agreements under which a property owner agrees to implement conservation measures for candidate or other unlisted species. In exchange, the Service issues an enhancement of survival permit that becomes active when the species covered by the CCAA is listed and allows a prescribed level of incidental take by the landowner for the duration of the agreement. While CCAAs enable a landowner to secure assurances as to what their post-listing responsibilities will be in advance of listing, these agreements do not explicitly address whether and how pre-listing conservation measures might serve as mitigation for post-listing activities that could negatively affect species, such as land clearing, construction activities, or water diversion.

Related to these efforts, at present, Service policy pertaining to conservation banking allows landowners or others to earn credits that can be used to offset the negative impacts of proposed actions on listed species. Under that policy, a credit represents a standardized way of quantifying the impact of beneficial actions on the well being of a particular listed species. Credits can be used to offset the negative effects of detrimental actions, with the magnitude of those negative effects quantified in the same manner. We seek any ideas to improve these forms of landowner agreements.

It is possible that voluntary conservation actions for unlisted species might lead to a determination that a particular species does not need to be listed. If the need to list a species under the ESA can be avoided, everyone benefits. The species benefit from early action to address threats to their survival. Landowners and other regulated interests avoid the imposition of potentially costly restrictions on their activities. The Service avoids the need to dedicate scarce conservation dollars to additional species. The States maintain their primary management authority over non-listed species, ensuring that local authorities respond to local problems with input from their residents.

Although everyone benefits from avoiding the need to list a species, there are often inadequate incentives for many people to undertake conservation action for species prior to listing. Voluntary conservation actions undertaken by one or a few persons are unlikely to be sufficient to affect the need to list the species. Thus, those who do undertake such actions in the hope that doing so will avert the need to list the species are often disappointed or frustrated by the fact that listing nevertheless occurs. Moreover, such voluntary actions prior to listing may actually result in those persons being subject to greater restrictions after listing than they would have been had they done nothing at all (because, for example, their voluntary actions make the species more numerous or more widespread on their property than it otherwise would have been).

Avoiding the potential for voluntary conservation actions to result in such unintended restrictions is a key purpose of a CCAA. Through a CCAA, the Service provides the assurance that if the conditions of the agreement are met, the landowner will not be asked to do more, commit more resources, or be subject to further land use restrictions than agreed upon if the species is listed. However, the development of such Agreements has often been time-consuming and difficult. Accordingly, the Service seeks suggestions to reduce the time and difficulty associated with CCAAs so as to further the goals of greater efficiency and flexibility in ESA regulatory programs.

We also give advance notice of our intent to propose a rule to encourage landowners and other potentially regulated interests to fund or carry out voluntary conservation actions beneficial to candidate and other at-risk species by providing a new type of assurance that, in the event the species is listed, the benefits of appropriate voluntary conservation actions will be recognized as offsetting the adverse effects of activities carried out by that landowner or others after listing.

Once a species is listed as endangered or threatened, actions that adversely affect it may need permits under section 10 of the ESA or approval under the interagency consultation provisions of

section 7 of the ESA. For actions reviewed under the interagency consultation provisions of section 7, measures that offset the adverse effects of those actions may be incorporated into and made a part of the proposed action as a way of reducing its net effects and meeting the approval standards of section 7.

Although existing regulations at 50 CFR 402.14(g)(8) require the Service to consider certain beneficial actions taken ''prior to the initiation of consultation,'' there is no clear mechanism for acknowledging the benefits to a species of actions voluntarily taken by a landowner or other person prior to its listing, or for recognizing those benefits as mitigation or other requirements needed to secure approval for an action carried out after listing.

An exception to the foregoing is any HCP that covers both listed and unlisted species, as many large-scale HCPs do. These plans, and the permits issued in association with them, acknowledge or verify the conservation commitments contained in the plans as fulfilling the requirements of the ESA with respect to all covered species even when required conservation actions are carried out before some covered species are actually listed, and the development activities for which they serve as mitigation may be carried out after the species is listed. Implicitly, at least, these plans are accepted as mitigation for actions undertaken after some covered species are listed. Thus, there is precedent for the conceptual idea examined here, but no clear mechanism for accomplishing mitigation prior to listing outside the context of multispecies HCPs.

We request suggestions and input from the public on how best to establish clear mechanisms to encourage landowners and other potentially regulated interests to fund or carry out voluntary conservation actions beneficial to candidate and other at-risk species by providing assurances that, in the event the species is listed, the benefits of appropriate voluntary conservation actions will be recognized as offsetting the adverse effects of activities carried out after listing by that landowner or others. In addition to the requests above, we specifically request input from the public on the following questions:

(1) How can the Service allow for the recognition of conservation credits for voluntary action taken in advance of listing in a manner that is efficient, readily understood, and faster? How can this be accomplished in an expeditious manner?

(2) Should credits recognized for voluntary conservation actions taken prior to listing be available for use solely by the person who created them or should they be transferable to third parties?

(3) If voluntary conservation actions undertaken prior to listing generate conservation credits that can be used to offset impacts of post-listing activities, should they be based solely on the beneficial actions of the person undertaking them, or should they be based on the net impacts of both beneficial and detrimental actions?

(5) What role should the States play in recognizing and overseeing the development of credits from voluntary conservation actions taken for species not yet listed?

(6) How can or should the Service specify in advance of listing the manner in which it will quantify the value of voluntarily undertaken conservation actions?

(7) How the Service's conservation banking policy could be revised to allow for the use of conservation credits accrued from voluntary actions taken prior to listing?

(8) What changes, if any, are needed to the following regulations, policies and guidance (The handbooks and policy are available at *http://www.fws.gov/endangered/esa-library/index.html*.) to clarify mechanisms by which the Service can give ''credit'' for beneficial actions for unlisted species:

a. 50 CFR part 13
b. 50 CFR part 17
c. 50 CFR part 402
d. The Service's section 7 Handbook
e. The Service's HCP Handbook
f. The Service's Conservation Banking Policy

(9) How could the Service use pilot projects to demonstrate that the ESA can provide landowners with credits and regulatory assurances for actions intended to benefit candidate species? Are there existing situations where such pilot projects could facilitate conservation for candidate species?

(10) How can a landowner use such voluntary ''prelisting mitigation'' activities to satisfy requirements arising from any future section 7 consultation (such as ''conservation measures,'' ''reasonable and prudent measure'' or ''reasonable and prudent alternatives'')?

In considering these and other potential changes to the ESA's implementing regulations, we intend to be guided by the following objectives:

- To improve the effectiveness of the ESA at conserving endangered, threatened, and candidate species;
- To eliminate unnecessary process requirements and to make as efficient as possible the remaining process requirements;
- To improve the clarity of, and eliminate the inconsistencies among, our regulations;
- To engage the States, conservation organizations, and private landowners more effectively as conservation partners;
- To encourage greater experimentation and creativity in the implementation of the Act; and
- To reduce the frequency and intensity of conflicts as much as possible.

Accordingly, we invite recommendations for changes to our regulations or policy that would further these objectives.

Authority

This notice is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 6, 2012.

Daniel M. Ashe,

Director, Fish and Wildlife Service.

[FR Doc. 2012–6221 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 51
Thursday, March 15, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings of Committees of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of two public meetings of the Committee on Collaborative Governance, and the rescheduling of a meeting of the Committee on Adjudication, of the Assembly of the Administrative Conference of the United States. At these meetings, the committees will consider draft reports and recommendations as noted below. Complete details regarding the committee meetings, the nature of the projects, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to each committee can be found on the Conference's Web site, at *http://www.acus.gov.* Click on ''Research,'' then on ''Committee Meetings.''

Comments may be submitted by email to *Comments@acus.gov*, with the name of the appropriate committee in the subject line, or by postal mail to the appropriate committee at the address given below.

DATES: Committee on Collaborative Governance: Tuesday, March 27, 2012, from 9 a.m. to 11:30 a.m. and Tuesday, May 8, 2012, from 1:30 p.m. to 4 p.m.

Committee on Adjudication: Monday, April 23, 2012, from 9:30 a.m. to 12:30 p.m. Please note that this meeting reschedules the Committee on Adjudication's meeting previously scheduled for Monday, April 16, 2012, from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer for the individual committee (see listings below), Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION:

Committee on Collaborative Governance

The Committee on Collaborative Governance will meet to discuss a draft report and possible recommendations on agency experience with joint rulemaking, including lessons learned and best practices for collaboration and coordination among regulatory agencies in the rulemaking process. The draft report was prepared by Professor Jody Freeman (Harvard University) and Professor Jim Rossi (Florida State University). The Designated Federal Officer for this committee is David Pritzker. More information can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Collaborative Governance.''

Committee on Adjudication

The April 23, 2012 meeting of the Committee on Adjudication is a rescheduling of the committee's meeting previously announced for April 16, 2012, from 9:30 a.m. to 12:30 p.m. At the meeting, the Committee on Adjudication will discuss further a draft report on the Immigration Adjudication Project and a draft recommendation based on the consultants' report. The report, prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (Brookings Institution), presents the findings of a study of potential improvements to the procedures for immigration adjudication. Funmi E. Olorunnipa is the Designated Federal Officer for this committee. More information can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Adjudication.''

Dated: March 9, 2012.

David M. Pritzker,

Deputy General Counsel.

[FR Doc. 2012–6193 Filed 3–14–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application Forms for Membership on a National Marine Sanctuary Advisory Council.

OMB Control Number: 0648–0397.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 520.

Average Hours Per Response: One hour.

Burden Hours: 520.

Needs and Uses: This request is for a revision and extension of a currently approved information collection.

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Advisory councils are individually chartered for each sanctuary to meet the needs of that sanctuary. Once an advisory council has been chartered, the sanctuary superintendent starts a process to recruit members for that council by providing notice to the public and requesting interested parties to apply for the available seat(s) (*e.g.*, Research, Education) and position(s) (*i.e.*, council member or alternate). The information obtained through this application process will be used to determine the qualifications of the applicant for membership on the sanctuary advisory council.

Two application forms are currently associated with this information collection: (a) National Marine Sanctuary Advisory Council Application form; and (b) National Marine Sanctuary Advisory Council Youth Seat Application form. Revision: These application forms have been revised to ensure consistency between forms, as well as clarify the information

and supplemental materials to be submitted by applicants. Application form instructions specify requirements imposed upon the agency when reviewing applicants as potential council members or alternates, including the need to assess potential conflicts of interest (or other issues) and the applicant's status as a federally-registered lobbyist. Specific questions posed to applicants have been reordered, reworded and, at times, condensed to improve the organization of applicant responses and, thereby, simplify the applicant review process.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions, Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: March 9, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6227 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency.

Title: Minority Enterprise Development (MED) Week Awards Program.

OMB Control Number: 0640–0025.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 100.

Average Hours Per Response: 2.

Burden Hours: 200.

Needs and Uses: One of MBDA's largest initiatives is the annual National Minority Enterprise Development (MED) Week Conference. The MED Week Conference recognizes the role that minority entrepreneurs play in building the American economy through the creation of jobs, products and services, in addition to supporting their local communities. The MED Week Conference includes stakeholders from the public and private sectors and provides a venue to discuss critical business issues affecting minority business, as well as strategies to foster the growth and competitiveness of the minority business community. The MED Week Awards Program is a key element of the MED Week Conference as it celebrates the outstanding achievements of minority entrepreneurs and other supporters of the minority business community. The MED Week Awards Programs has several award categories including the Minority Construction Firm of the Year, Minority Technology Firm of the Year, Minority Supplier Distributor of the Year, Advocate of the Year, Media Award, Distinguished Supplier Diversity Award, Access to Capital Awards, Ronald H. Brown Leadership Award, and the Abe Venable Award for Lifetime Achievement. Nominations for these awards are open to the public. MBDA must collect two kinds of information: (a) Information identifying the nominee and nominator; and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants that best meet the preannounced selection criterion. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases the burden of applicants and reviewers. Participation in the MED Week Awards Program is voluntary and the awards are strictly honorary.

Affected Public: Individuals or households, business or other for- profit organizations, not-for-profit institutions, and federal, state, local or tribal governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: March 9, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6228 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1818]

Expansion of Foreign-Trade Zone 71; Windsor Locks, CT

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic and Industrial Development Commission of Windsor Locks, grantee of Foreign-Trade Zone 71, submitted an application to the Board for authority to expand FTZ 71 to include a site in East Granby/Windsor, Connecticut, within the Hartford Customs and Border Protection port of entry (FTZ Docket 47–2011, filed 7/5/2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 40688–40689, 7/11/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 71 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of February 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–6300 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1816]

Reorganization/Expansion of Foreign-Trade Zone 106 under Alternative Site Framework, Oklahoma City, OK

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Port Authority of Greater Oklahoma City, grantee of Foreign-Trade Zone 106, submitted an application to the Board (FTZ Docket 20–2011, filed 3/15/2011) for authority to reorganize and expand under the ASF with a service area of Blaine, Caddo, Canadian, Cleveland, Comanche, Custer, Garfield, Garvin, Grady, Kay, Kingfisher, Lincoln, Logan, McClain, Noble, Oklahoma, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties, Oklahoma, within and adjacent to the Oklahoma City Customs and Border Protection port of entry, FTZ 106's existing Sites 1 (as combined with Site 8), 12 and 13 would be categorized as magnet sites, existing Sites 2 and 14 would be categorized as usage-driven sites, and the grantee proposes two new magnet sites (Sites 15 and 16);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 15290–15291, 3/21/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 106 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 12, 13, 15 and 16 if not activated by February 28, 2017, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2 and 14 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by February 28, 2015.

Signed at Washington, DC, this 29th day of February 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–6299 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–847]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 16, 2011, the Department of Commerce (Department) published the preliminary results of the second administrative review of the antidumping duty order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India. The review covers one manufacturer/exporter of the subject merchandise to the United States: Aquapharm Chemicals Pvt., Ltd. (Aquapharm). The period of review (POR) is April 1, 2010, through March 31, 2011. The final weighted-average dumping margin for the manufacturer/exporter is listed below in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* March 15, 2012.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–4136 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one manufacturer/exporter of the subject merchandise to the United States: Aquapharm.

On December 16, 2011, the Department published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India (76 FR 78237).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. Therefore, the final results do not differ from the preliminary results. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid [1] also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this order is dispositive.

Final Results of the Review

As a result of our review, we determined that the following weighted-average margin percentage applies for the period April 1, 2010, through March 31, 2011:

Manufacturer/Exporter	Margin (percent)
Aquapharm Chemicals Pvt., Ltd	0.00

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$.

intends to issue appropriate appraisement instructions for the respondent subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Where the respondent reported entered value for its U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

Where the respondent did not report entered value for its U.S. sales, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), and therefore the cash deposit rate is 0 percent; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.10 percent, the all-others rate established in the LTFV investigation. *See 1-Hydroxyethylidene-1, 1- Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value,* 74 FR 10543 (March 11, 2009). These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 7, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–6303 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monitor National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Monitor National Marine Sanctuary Advisory Council: Archaeological Research, Conservation, Economic Development, Recreational Diving, and Youth seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's charter.

DATES: Applications are due by May 1, 2012.

ADDRESSES: Application kits may be obtained from Shannon Ricles, 100 Museum Drive, Newport News, VA 23606. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Shannon Ricles, 100 Museum Drive, Newport News, VA 23606; 757–591–7328; *Shannon.Ricles@noaa.gov; http://monitor.noaa.gov.*

SUPPLEMENTARY INFORMATION: Established in 1975 as the Nation's first marine sanctuary, the Monitor National Marine Sanctuary is managed by NOAA's Office of National Marine Sanctuaries. It is one of 13 sanctuaries and protects the wreck of the famed Civil War ironclad, USS Monitor, best known for its battle with the Confederate ironclad, CSS Virginia in Hampton Roads, VA, on March 9, 1862.

The advisory council consists of 19 members: 11 non-governmental voting members, six governmental voting members, and one non-voting Youth Seat. The council seats represent a variety of regional interests and stakeholders, including: Citizen-at-Large, Conservation, Economic Development, Education, Heritage Tourism, Maritime Archaeological

Research, Recreational/Commercial Fishing, Recreational Diving, The Mariners' Museum, Youth, the U.S. Navy, Virginia Department of Historic Resources, North Carolina Department of Cultural Resources, North Carolina Department of Environmental and Natural Resources, the National Park Service, and the U.S. Coast Guard. It is the combined expertise and experience of these individuals that creates an advisory council that is a valuable and effective resource for the sanctuary manager.

The council's objectives are to provide the sanctuary manager with advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving sanctuary use or resources; (2)identifying and realizing the sanctuary's research objectives; (3) identifying and realizing educational opportunities to increase public knowledge and stewardship of the sanctuary environment; and (4)developing an informed constituency to increase awareness and understanding of the purpose and value of the sanctuary and the National Marine Sanctuary System.

The council may serve as a forum for consultation and deliberation among its members and as a source of advice to the sanctuary manager regarding the management of the Monitor National Marine Sanctuary. The sanctuary advisory council holds open meetings to ensure continued public input on management issues and to increase public awareness and knowledge of the sanctuary environment. Public participation at these meetings is welcomed and encouraged.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 5, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–6076 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Stellwagen Bank National Marine Sanctuary Advisory Council: (1) At-Large Member; (2) Research Alternate; (1) Youth Member; and (1) Youth Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's charter.

DATES: Applications are due by 27 April 2012.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov,* Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026, ext. 201. Completed applications should be sent to the same address or email, or faxed to 781–545–8036.

FOR FURTHER INFORMATION CONTACT: Contact *Nathalie.Ward@noaa.gov,* External Affairs Coordinator, telephone: 781–545–8026, ext. 206.

SUPPLEMENTARY INFORMATION: The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 17 voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal government agencies. Since its establishment, the Council has played a vital role in advising the Sanctuary and NOAA and critical issues.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 1, 2012.

Daniel J. Basta,

Director of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–6073 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Thunder Bay National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries, National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applicants for the following seats on the Thunder Bay National Marine Sanctuary Advisory Council (council): Education (elementary, junior high, and high school), Fishing (recreational, charter, and/or commercial), Diving (including snorkeling), Tourism, Maritime History & Interpretation, and Citizen-at-Large. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by March 30, 2012.

ADDRESSES: Application kits may be obtained from Thunder Bay National Marine Sanctuary, 500 W. Fletcher Street, Alpena, Michigan 49707. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jean Bauer, Advisory Council Coordinator, Thunder Bay National Marine. Sanctuary, 500 W. Fletcher Street, Alpena, Michigan 49707, (989) 356–8805 ext. 13, *jean.prevo@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Thunder Bay Sanctuary Advisory Council (council) was established in 1997. The council has fifteen members and fifteen alternates, five seats represent local community governments, and the other ten represent facets of the sanctuary

community, including education, research, fishing, diving, tourism, economic development, and the community at large. The council meets bi-monthly, with informal coffees and lunches scheduled for non-meeting months. Working groups meet as needed. The fifteen alternates also take an active role in council meetings as well as assist in carrying out many volunteer assignments throughout the year.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 29, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–6070 Filed 3–14–12; 8:45 am]

BILLING CODE 3510–NK–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

The following notice of a scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled a meeting for the following date: March 20, 2012 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The Commission may also consider and vote on dates and times for future meetings. The agenda for this meeting will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–6445 Filed 3–13–12; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0036]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/ Central Security Service, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The National Security Agency (NSA) is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 16, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instruction for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248 or at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security System' systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 9, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 06

SYSTEM NAME:

NSA/CSS Health, Medical and Safety Files (February 10, 2009, 74 FR 6581).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Primary Location: National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

DECENTRALIZED SEGMENTS:

Each staff, line, contract and field element as appropriate.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in those cases involving compensation claims.

The DoD ''Blanket Routine Uses'' published at the beginning of the NSA/ CSS compilation of system of records notices apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Occupational Health, Environmental & Safety Services, National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine

whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN), mailing address, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN), mailing address, and signature.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

* * * * *

[FR Doc. 2012–6211 Filed 3–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Amendment No. 001 to the Solicitation for Cooperative Agreement Applications (SCAA) Issued on April 12, 2011 and Amendment No. 005 to the SCAA Issued on July 7, 2010

AGENCY: Defense Logistics Agency, DoD.

ACTION: Amended solicitations for cost sharing cooperative agreement applications.

SUMMARY: The Defense Logistics Agency (DLA) executes the Department of Defense (DoD) Procurement Technical Assistance Program by awarding cost sharing cooperative agreements to assist States, local governments, private nonprofit organizations, tribal organizations and economic enterprises in establishing or maintaining procurement technical assistance centers (PTACs) pursuant to Chapter 142 of title 10, United States Code.

DLA amended the Solicitation for Cooperative Agreement Applications (SCAA) issued July 7, 2010 (Amendment No. 005), which is applicable to States, local governments, private nonprofit organizations, and the SCAA issued April 12, 2011 (Amendment No. 001), which is applicable to Economic Enterprises and Tribal Organizations defined in 10 U.S.C. § 2411(1)(D), to allow acceptance of applications for new programs in fiscal year (FY) 2012. For FY 2012, new applications will only be considered from entities proposing to provide service to an area that will not be covered by an existing program. Applications proposing to duplicate any portion of the service area of an existing program will neither be accepted nor considered.

The Amendments issued identify significant areas that are not covered or are expected to become uncovered in FY 2012. However, not all uncovered areas are identified. Any entity contemplating submitting an application, including those that propose to service an area identified, must first submit the inquiry, which is discussed in each Amendment, to ascertain if the proposed area is covered.

Funding of new programs for FY 2012 is contingent on the availability of funds. In addition, awards may not be made to all acceptable applicants. Award decisions will optimize the use of program funds while at the same time maximizing the availability of procurement technical assistance. DLA will make funding decisions on a case-by-case basis and in the best interest of the overall program. An award decision for any application submitted pursuant to the Amendments issued will be made prior to October 1, 2012.

Solicitations and Amendments are available at *http://www.dla.mil/SmallBusiness/Pages/SCAA.aspx*. Additional details regarding these opportunities are provided in the Amendments. Printed copies are not available for distribution. Applications must be submitted to DLA by 5 p.m., Eastern Daylight Time, on June 7, 2012. Notwithstanding any other provision in the SCAA or in previous Amendments, late applications will be neither accepted nor evaluated.

FOR FURTHER INFORMATION CONTACT: DLA Office of Small Business Programs at *PTAP@DLA.MIL*.

Dated: March 9, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6204 Filed 3–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Gainful Employment Reporting Deadline Date for the 2011–2012 Award Year

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline date for the receipt of information from institutions for programs that prepare students for gainful employment in a recognized occupation and that are eligible to participate in the Federal student assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2011–2012 award year. These are Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, William D. Ford Federal Direct Loan, Teacher Education Assistance for College and Higher Education Grant, and Iraq and Afghanistan Service Grant programs.

DATES: *Deadline Date:* October 15, 2012.

SUPPLEMENTARY INFORMATION: The regulations at 34 CFR 668.6 provide the reporting and disclosure requirements for programs that prepare students for gainful employment in recognized occupations. The regulations at 34 CFR 668.6(a)(1) identify the information that institutions are required to report.

The regulations at 34 CFR 668.6(a)(2)(i)(C) provide that an institution must report gainful employment information from the most recently completed award year no earlier than September 30, but no later than the date established by the Secretary through a notice published in the **Federal Register**. Accordingly, through this notice, the Secretary announces that institutions must report the information required under 34 CFR 668.6(a)(1) for the 2011–2012 award year no later than October 15, 2012.

FOR FURTHER INFORMATION CONTACT: Rene Tiongquico, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza, room 113H1, Washington, DC 20202–5345. Telephone: (202) 377–4270.

If you use a telecommunications device for the deaf (TDD) or a text

telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the program contact person listed in this section.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1001(b), 1002(b), 1002(c),1070a, 1070b–1070b–4, 1070g, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: March 6, 2012.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2012–6363 Filed 3–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Efficiency and Renewables Advisory Committee (ERAC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Efficiency and Renewables Advisory Committee (ERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires public notice of the meeting be announced in the **Federal Register**.

DATES: Thursday, April 19, 2012, 8 a.m.–3 p.m. (EST)

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: JoAnn Milliken, ERAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC, 20585. Email: *erac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and recommendations to the Secretary of Energy on the research, development, demonstration, and deployment priorities within the field of energy efficiency and renewable energy.

Tentative Agenda: (Subject to change; updates will be posted on the web at: *www.erac.energy.gov*):

- EERE Strategic Plan
- EERE Impacts
- ERAC Planning

Public Participation: Members of the public are welcome to observe the business of the meeting and make oral statements during the specified period for public comment. The public comment period will take place between 2:30 p.m. and 3 p.m. the day of the meeting (Thursday, April 19, 2012). An early confirmation of attendance will help facilitate access to the building more quickly. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, please send an email to: *erac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise ERAC staff as soon as possible by emailing *erac@ee.doe.gov* to initiate the necessary procedures, but no later than Wednesday, April 4, 2012. Anyone attending the meeting will be required to present government-issued photo identification, such as a passport or driver's license.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak, but will not exceed 5 minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the committee will make every effort to hear the views of all interested parties and is empowered to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be emailed to *erac@ee.doe.gov.*

Minutes: The minutes of the meeting will be available for public review at *www.erac.energy.gov.*

Issued in Washington, DC, on March 9, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–6270 Filed 3–14–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U. S. Energy Information Administration

Proposed Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed information collection; notice and request for comments.

SUMMARY: The EIA invites public comment on a proposed collection of information that EIA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The EIA is soliciting comments on two proposed actions (1) revisions to the Form EIA–923, ''Power Plant Operations Report'' and Form EIA–861, ''Annual Electric Power Industry Report,'' and (2) creation of the Form EIA–861S, Annual Electric Power Industry Report (Short Form).

The Federal Energy Administration Act of 1974, specifically 15 U.S.C. 790a, and the DOE Organization Act, specifically 42 U.S.C. 7135, require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information.

The EIA collects information about the electric power industry for use by government and private sector analysts. The survey information is disseminated in a variety of electronic products and files. For details on the EIA electric power information program, please visit the electricity page of the EIA Internet site at *http://www.eia.gov/electricity/.*

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501, *et seq.*), provides the general public and others with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Also, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The proposed changes to the Form EIA–861 and Form EIA–923 survey forms and the creation of the new Form EIA–861S (''short form'') are designed to reduce the number of survey responses processed by EIA without materially sacrificing the quality of the data collected and published. The primary objective is to allow EIA to better match its workload to its available resources. The proposed changes would also reduce the burden on respondents.

The proposed changes would not alter the current expiration date for the existing Form EIA–923 and Form EIA–861 surveys of October 31, 2013. The requested expiration date for the new Form EIA–861S is also October 31, 2013. During 2013, EIA will request the standard 3-year approval for these and other electric power forms (i.e., for 2014 through 2016).

The form changes are explained below. Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible non-statistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section, below.

DATES: Comments regarding this proposed information collection must be received on or before May 14, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** below as soon as possible.

ADDRESSES: Send comments to Rebecca Peterson. To ensure receipt of the comments by the due date, email is recommended (*Electricity2013@eia.gov*). Comments may also be submitted via fax at (202) 586–3045 or mail to U. S. Department of Energy, U. S. Energy Information Administration, EI–23, 1000 Independence Avenue SW., Washington, DC 20585. Alternatively, Rebecca Peterson may be contacted by telephone at (202) 586–4509.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ms. Peterson at the contact information given above. The proposed forms and instructions, along with related information on this clearance package, can be viewed at *http://www.eia.gov/survey/changes/electricity.*

SUPPLEMENTARY INFORMATION: This information collection request includes information on two surveys for which material changes are proposed, the Forms EIA–861, and EIA–923, and for the new Form EIA–861S.

Form EIA–861

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–861, ''Annual Electric Power Industry Report''.

(3) *Type of Request:* Revision.

(4) *Purpose:*

Need for and proposed use of the information: The Form EIA–861 is used to collect retail sales of electricity and associated revenue from all electric utilities, energy service providers, and distribution companies in the United States, its territories, and Puerto Rico on an annual basis. The data from this form appear in various EIA information products and are used by public and private analysts to monitor the current status and trends of the electric power industry and to evaluate the future of the industry. The response obligation for the information collection is mandatory.

The EIA proposes the following changes to Form EIA–861, ''Annual Electric Power Industry Report.''

Modify the frame from a census to a sample, and use imputation methods to estimate the sales revenues and customer counts by sector and State for the remaining industry.

Currently there are approximately 3,300 respondents to the Form EIA–861. The current proposal would decrease that to approximately 2,200 respondents.

(5) *Annual Estimated Number of Respondents:* 2,200.

(6) *Annual Estimated Number of Total Responses:* 2,200.

(7) *Annual Estimated Number of Burden Hours:* 19,800.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0 There are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Form EIA–861S

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–861S, ''Annual Electric Power Industry Report (Short Form)''.

(3) *Type of Request:* New.

(4) *Purpose:*

Need for and proposed use of the information: Form EIA–861S will be used to collect information on the status of select electric power industry participants involved in the sale and distribution of electricity in the United States. The data collected on this form will be used to provide statistical estimates that will appear in various EIA information products and will be used by public and private analysts to monitor the current status and trends of the electric power industry and to evaluate the future of the industry. The response obligation for the information collection is mandatory.

The EIA proposes the following for Form EIA–861S, ''Annual Electric Power Industry Report (Short Form)''.

Create a new Form EIA–861S for the respondents that have been removed from the Form EIA–861 frame (about 1,100 respondents; see above). The new survey will ask respondents for contact information and a limited set of primarily yes/no questions concerning their status and operations. This limited data will be used to estimate nationwide totals, in combination with the comprehensive data collected from the sample on the Form EIA–861.

In addition, for advanced metering and time-based tariff programs, EIA will collect limited data.

The Form EIA–861S is to be completed by all electric utilities with annual retail sales in the prior year of 100,000 megawatthours or less, with the following exceptions: (1) A respondent has retail sales of unbundled service; (2) A full set of data is required from the respondent to ensure that statistical estimates for a state or business sector are of acceptable quality; (3) A respondent reports in aggregate under the Tennessee Valley Authority (TVA) or WPPI Energy; and (4) A respondent has other unique retail programs of interest to the public the nature and extent of which cannot be adequately captured via this short form. Utilities for which any of the exceptions apply must complete the regular (long) version of the Form EIA–861 survey.

Note that respondents can only complete one type of Form EIA–861, either the Form EIA–861 or the Form EIA–861S, but not both. Also note that responses are collected on both types of forms at the business (operating) level (not at the holding company level).

In order to maintain the accuracy of the estimation procedure, once every 5 years the Form EIA–861S respondents would be required to complete the Form EIA–861. Assuming this proposal is implemented, the first time all respondents would be required to

complete the Form EIA–861 would be in 2017 for 2016 data.

EIA has performed an analysis to develop a methodology to impute for the sales, revenue, and customer data by State and sector that will not be collected annually from the respondents on the short form. A description of this methodology can be found at *www.eia.gov/survey/forms/eia-861/methodology.pdf.*

(5) *Annual Estimated Number of Respondents:* 1,100.

(6) *Annual Estimated Number of Total Responses:* 1,100.

(7) *Annual Estimated Number of Burden Hours:* 825.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0. There are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Form EIA–923

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–923, ''Power Plant Operations Report,'' Schedule 2, Cost and Quality of Fuel Purchases.

(3) *Type of Request:* Revision.

(4) *Purpose:*

Need for and proposed use of the information: Form EIA–923 collects information from regulated and unregulated electric power plants in the United States. The current proposal affects only Schedule 2, Cost and Quality of Fuel Receipts. (As a matter of information, other data collected include electric power generation, energy source consumption, and end of reporting period fossil fuel stocks). Data are published for use by Congress and public and private analysts in the following EIA publications*: Electric Power Annual, Electric Power Monthly, Monthly Energy Review,* and *Annual Energy Review.* The response obligation for the information collection is mandatory.

The EIA proposes the following changes to Form EIA–923, ''Power Plant Operations Report.''

Schedule 2 of the Form EIA–923, ''Power Plant Operations Report,'' collects the cost and quality of fossil fuel purchases made by electric power plants with at least 50 megawatts (MW) of nameplate capacity primarily fueled by fossil fuels. The selection of respondents for Schedule 2 and its predecessors, the Form EIA–423 and the FERC Form 423 (the latter dating to the early 1970s), were tied to a minimum size threshold that varied over time from 25 MW to 50 MW. The types of plants required to respond have also changed over time. When Form EIA–923 was first implemented, EIA imputed small amounts of data for receipts or cost of the fuel delivered to plants for power plants that did not meet the minimum capacity threshold.

The proposed change from plants with a total fossil-fueled nameplate capacity of 50 MW or more to plants with a total fossil-fueled nameplate capacity of 200 MW or more will reduce the number of respondents who are required to complete Schedule 2. The change would also modify the required fossil fuel types to exclude self-produced and minor fuels, i.e., blast furnace gas, other manufactured gases, kerosene, jet fuel, and waste oils.

As part of this change, EIA would cease its current efforts to impute for fuel receipts and fuel cost for plants that do not meet the minimum capacity threshold. The collected data would be presented for fuel receipts, cost, and quality information for relatively large power plants.

These changes would have a limited impact of the survey's coverage of cost and quality for the major fossil fuels used in power generation (coal, distillate and residual fuel oil, petroleum coke, and natural gas) as even under this proposal EIA would still collect cost and quality data on the vast majority of receipts of coal and natural gas, the two main fossil fuels consumed in power generation. For additional details see the information posted on the EIA Web site at *www.eia.gov/survey/forms/eia-923/impact.pdf.*

Note that the proposed change to Schedule 2 does not affect the collection of fuel consumption information and reporting requirements on other schedules of the Form EIA–923. Data on fuel consumption and related information are collected from all generators using combustible fuels with a power plant capacity of 1 MW or greater.

EIA expects this change will reduce resource requirements for processing and validating data based on the effort that was required in the past to verify data from small respondents and for the cost of minor fuels with highly variable quality characteristics and price.

(5) *Annual Estimated Number of Respondents:* Estimated number of respondents: There are three variants of the Form EIA–923 survey, i.e. the monthly, the annual, and the supplemental. Currently, there are 1,912 monthly respondents, 4,042 annual respondents, and 1,508 supplemental respondents. The annual total number of responses received for the monthly, annual, and supplemental Form EIA–923 surveys is 28,494. Under the current proposal, the number of respondents that file Schedule 2 of the monthly report will be reduced from 1,089 to 956 per month. The number of respondents that file Schedule 2 annually will be reduced from 421 to 0.

(6) *Annual Estimated Number of Total Responses:* 28,494.

(7) *Annual Estimated Number of Burden Hours:* 78,957.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0. There are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed above. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

As a Potential Respondent to the Request for Information

A. Please comment on the specific proposed changes discussed above:

1. Treatment of the Form EIA–861 as a sample to be supplemented by imputed estimates.

2. Introduction of the Form EIA–861S short form to be completed by relatively small utilities.

3. Increase in the reporting threshold for Schedule 2 of the Form EIA–923 to 200 MW, and limiting the data collection to coal, distillate oil, residual oil, petroleum coke, and natural gas.

4. Elimination of imputation for respondents that do not meet the reporting threshold for Schedule 2 of the Form EIA–923.

B. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

C. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information collected?

D. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

E. Can the information be submitted by the due dates?

F. Burden estimates per response include the total time necessary to gather and provide the requested information. In your opinion, how accurate are the following burden estimates?

Forms EIA–861 and EIA–861S: The public reporting burden for the Form EIA–861, ''Annual Electric Power Industry Report,'' is currently 9.0 hours per response with a total annual burden

of approximately 29,700 hours. Because the proposal is to decrease the size of the frame (not the content of the survey form), the burden reduction is expressed as the change in total annual hours. The frame reduction would result in an estimated 33-percent decrease in the total annual burden for this form, or 9,900 hours (1,100 respondents multiplied by 9 hours per response). The annual burden for the proposed Form EIA–861S, ''Annual Electric Power Industry Report (Short Form),'' is estimated at 825 hours (1,100 respondents multiplied by 0.75 burden hours per response). The net annual burden reduction between the two forms is estimated at 9,075 hours.

Form EIA–923: The total annual burden for the Form EIA–923, ''Power Plant Operations Report,'' is currently estimated at 81,518 hours. This figure is the sum of the burden hours for each survey (monthly, annual, and supplemental), which is calculated by multiplying the total number of responses per survey by the burden hours per survey response. The total annual burden hours under this proposal is estimated at 78,957 hours. This number is the sum of the new burden hours for each survey, which is calculated by multiplying the revised number of responses per survey by the revised burden hours per survey response. The proposed threshold increase for Schedule 2 would result in an estimated 3.1-percent decrease in the total annual burden for the Form EIA–923, calculated as the percentage decrease between the current and revised estimated total annual burden hours.

G. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

H. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

I. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected:

A. Please comment on the specific proposed changes discussed above:

1. Treatment of the Form EIA–861 as a sample to be supplemented by imputed estimates.

2. Introduction of the Form EIA–861S short form to be completed by relatively small utilities.

3. Increase in the reporting threshold for Schedule 2 of the Form EIA–923 to 200 MW, and limiting the data collection to coal, distillate oil, residual oil, petroleum coke, and natural gas.

4. Elimination of imputation for respondents that do not meet the reporting threshold for Schedule 2 of the Form EIA–923.

B. Is the proposed collection of information necessary for the proper performance of the functions of the Agency and does the information have practical utility?

C. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

D. Is the information useful at the levels of detail to be collected? For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these proposals. They also will become a matter of public record.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on March 9, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2012–6267 Filed 3–14–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The EIA has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Form EIA–914, ''Monthly Natural Gas Production Report'' OMB Control Number 1910–0205. The proposed collection will collect monthly data on the production of natural gas in seven geographical areas (Texas (including State offshore), Louisiana (including State offshore), Oklahoma, New Mexico, Wyoming, Federal Gulf of Mexico offshore and Other States (defined as all remaining states, except Alaska, in which the operator produced natural gas during the report month)). Data will be used to monitor natural gas supplies. Survey respondents would be a sample of well operators.

DATES: Comments regarding this proposed information collection must be received on or before April 16, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *Chad_S_Whiteman@omb.eop.gov.*

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

A copy of comments should also be sent to Jason Worrall. To ensure receipt of the comments by the due date, email (*Jason.worrall@eia.gov*) is recommended. The mailing address is Office of Survey Development and Statistical Integration, (EI–21), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–0670. Mr. Worrall may be contacted by telephone at (202) 586–6075.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jason Worrall. To ensure receipt of the comments by the due date, email (*Jason.worrall@eia.gov*) is recommended. The mailing address is Office of Survey Development and Statistical Integration, (EI–21), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–0670. Mr. Worrall may be contacted by telephone at (202) 586–6075.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0205.

(2) *Information Collection Request Title:* Form EIA–914, ''Monthly Natural Gas Production Report''.

(3) *Type of Request:* Three-year extension.

(4) *Purpose:* The purpose of the survey is to collect monthly data on the production of natural gas in seven geographical areas (Texas (including State offshore), Louisiana (including State offshore), Oklahoma, New Mexico, Wyoming, Federal Gulf of Mexico offshore and Other States (defined as all remaining states, except Alaska, in which the operator produced natural gas during the report month). Data will be used to monitor natural gas supplies. Survey respondents would be a sample of well operators.

(5) *Annual Estimated Number of Respondents:* 243.

(6) *Annual Estimated Number of Total Responses:* 2,916.

(7) *Annual Estimated Number of Burden Hours:* 8,748.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0. There are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on March 9, 2012.

Renee Miller,

Acting Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–6268 Filed 3–14–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–480–000.

Applicants: Kern River Gas Transmission Company.

Description: 2012 Period Two Correction to be effective 5/1/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5056.

Comments Due: 5 p.m. ET 3/20/12.

Docket Numbers: RP12–481–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Negotiated Rate Amendment—Wisconsin Electric to be effective 4/1/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5098.

Comments Due: 5 p.m. ET 3/20/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–458–001.

Applicants: Eastern Shore Natural Gas Company.

Description: Amendment of RP12–458 General Terms and Conditions to be effective 4/1/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5132.

Comments Due: 5 p.m. ET 3/13/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6272 Filed 3–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Communication date	Presenter or requester
Prohibited:		
1. ER12–309–000	12–30–11	David Scheibel.
2. CP10–477–000	2–16–12	Kent Harrington & Pam Miller.
3. CP12–29 & PF11–2–000	2–16–12	Larry Jones.
4. P–14263–000	2–16–12	Commission Staff [1].
5. RC11–6–000	2–21–12	Robin J. Lunt.
6. P–12790–000	2–27–12	Commission Staff [2].
7. P–2210–000	2–27–12	Commission Staff [3].
8. P–13080–003	2–28–12	Commission Staff [4].
9. ER12–469–000	3–6–12	Steven Pincus.
10. CP11–72–000	3–8–12	Charif Souki.
Exempt:		
1. P–13123–012	2–10–12	Commission Staff [5].
2. P–12632–000	2–14–12	Governor Rick Perry.
3. P–12715–003	2–13–12	Commission Staff [6].
4. P–12715–003	2–13–12	Commission Staff [7].
5. P–2305–000	2–15–12	Hon. Kay Bailey Hutchison.
6. P–12632–000	2–15–12	Hon. Joe Straus.
7. CP11–161–000	2–16–12	Commission Staff [8].
8. P–13123–002	2–20–12	Commission Staff [9].
9. CP08–6–000	2–22–12	Hon. Thad Cochran.
10. CP12–30–000	2–23–12	Commission Staff [10].
11. CP07–52–000	2–23–12	Commission Staff [11].
12. P–2149–152	2–24–12	Hon. Dave Reichert.
13. P–12715–000	2–24–12	Commission Staff [12].
14. P–2149–152	2–28–12	Hon. Cathy McMorris Rodgers.
15. P–459–212	3–1–12	Mayor Penny Lyons.
16. CP11–72–000	3–7–12	Commission Staff [13].

[1] Telephone record.
[2] Email record.
[3] Email record.
[4] Email record.
[5] Email record.
[6] Telephone record.
[7] Email record.
[8] Telephone record.
[9] Email record.
[10] Telephone record.
[11] Telephone record.
[12] Email record.
[13] Telephone record.

Dated: March 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6271 Filed 3–14–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL– 9647–9]

Public Water System Supervision Program Approval for the State of Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Minnesota is revising its approved public water system supervision program for four major rules. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these revisions. This approval action does not extend to public water systems in Indian Country, as the term is defined in 18 U.S.C. 1151. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian Tribes in Minnesota, nor does it intend to limit existing rights of the State of Minnesota.

Any interested person may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by April 16, 2012. If a substantial request for a public hearing is made within the requested time frame, a public hearing will be held and a notice of such hearing will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on April 16, 2012. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Minnesota Department of Health, 625 North Robert Street, P.O. Box 64975, St. Paul, Minnesota, 55164–0975, and/or the U.S. Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago,

Illinois 60604, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janet Kuefler, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone, at (312) 886–0123, or at *kuefler.janet@epa.gov.*

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: March 7, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–6281 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9646–9]

Clean Water Act; Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Public Comment.

SUMMARY: This action announces the availability of the Environmental Protection Agency's (EPA) proposed decision identifying water quality limited segments and associated pollutants in Oregon to be listed pursuant to section 303(d)(2) of the Clean Water Act (CWA). EPA is proposing to add 1004 water quality limited segments to Oregon's 2010 Section 303(d) list. EPA solicits public comment on these proposed listings. The proposed listings, together with additional information concerning the proposed listings, are available for review on EPA's Web site.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: Comments: Comments on the proposed listing action must be sent electronically or by mail to Jill Gable, 303(d) Listing Program, Office of Water and Watersheds; USEPA Region 10; 1200 6th Ave. Suite 900, OWW–134; Seattle, WA 98101; telephone (206) 553–2582, facsimile (206) 553–0165, email *gable.jill@epa.gov*. Oral comments will not be considered.

Availability for Review: Copies of the proposed decision concerning Oregon's 303(d) list which explain the rationale for EPA's proposed decision can be obtained at EPA Region 10's Web site at: *www.epa.gov/region10/notices/oregon303d.html,* or by writing or calling Ms. Gable at the above address.

FOR FURTHER INFORMATION CONTACT: Jill Gable at (206) 553–2582 or *gable.jill@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) (hereinafter referred to as ''Section 303(d)'') requires states to identify those waters within their jurisdiction for which effluent limitations are not stringent enough to implement applicable water quality standards, to establish a priority ranking for such waters, and to submit a listing of such waters to EPA (hereinafter referred to as a ''303(d) list'').

EPA's Water Quality Planning and Management regulations include requirements for implementation of section 303(d), at 40 CFR 130.7. 40 CFR 130.7(d) requires states to identify water quality limited waters still requiring Total Maximum Daily Loads (TMDLs) every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years. See 40 CFR 130.7(d).

Section 303(d)(2) also requires that EPA approve or disapprove lists submitted by States. If EPA disapproves a list, EPA must identify waters in the state that do not meet water quality standards. After EPA has identified waters not attaining water quality standards, EPA must issue a public notice seeking comments on the list. See 40 CFR 130.7(d)(2).

On May 24, 2011, the Oregon Department of Environmental Quality (''ODEQ'') submitted Oregon's 2010 Section 303(d) list of water quality limited segments (''WQLSs'') (''Oregon's 2010 303(d) list''), to EPA, as part of the Integrated Report submitted by the state to meet the requirements of sections 303(d), 305(b), and 314 of the CWA. On March 15, 2012, EPA sent a letter to ODEQ, in which EPA approved ODEQ's inclusion of 970 water quality limited segments to Oregon's 303(d) list and ODEQ's removal of 927 water quality limited segments from Oregon's 303(d) list.

In the March 15, 2012 letter to ODEQ, EPA also disapproved Oregon's decisions not to list 1004 water quality limited segments as impaired, including 321 water quality limited segments that Oregon identified as impaired but failed to list on the Section 303(d) list. EPA has identified these additional water quality limited segment for inclusion on the State's 2010 Section 303(d) list. These water quality limited segments and associated pollutants as proposed by EPA are identified in Enclosure 3 of the decision document available at the following Web site link: *www.epa.gov/region10/notices/oregon303d.html*.

EPA is providing the public the opportunity to review its proposed decision to list 1004 water quality limited segments to Oregon's 2010 Section 303(d) list. EPA will consider and respond to public comments in reaching its final decision on the addition of the referenced water bodies and pollutants identified for inclusion on Oregon's 2010 303(d) list.

Dated: March 2, 2012.

Michael A. Bussell,

Director, Water Division, EPA Region X.

[FR Doc. 2012–6022 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9647–5]

2012 Annual Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2012 Annual Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. The Commission will be evaluating potential measures and considering actions in areas such as performance standards for electric generating units (EGUs) on high electric demand days, oil and gas boilers serving EGUs, small natural gas boilers, stationary generators, energy security/energy efficiency, architectural industrial and maintenance coatings, consumer products, institution commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, lightering, and non-road idling.

DATES: The meeting will be held on May 24, 2012 starting at 9 a.m. and ending at 4 p.m.

LOCATION: Sheraton Suites Old Town Alexandria, 801 North Saint Asaph Street, Alexandria, Virginia 22314; (703) 836–4700.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; email: *ozone@otcair.org;* Web site: *http://www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by email: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: March 1, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–6280 Filed 3–14–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 12–25; DA 12–355]

Mobility Fund Phase I Auction GIS Data of Potentially Eligible Census Blocks

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission's Wireless Telecommunications and Wireline Competition Bureaus (the ''Bureaus'') announce the availability of geographic information system (GIS) data for the census blocks potentially eligible for Mobility Fund Phase I support to be offered in Auction 901. This data does not update or replace the list of potentially eligible blocks. Rather, it provides the same data in additional formats and thus just supplements the previously-released data files and interactive map. The Bureaus are taking this step to make the data accessible to more people and to make it easier to use for individual analysis.

FOR FURTHER INFORMATION CONTACT: Lisa Stover of the Auctions and Spectrum Access Division at (717) 338–2868. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Mobility Fund Phase I Auction GIS Data for Potentially Eligible Census Blocks Public Notice* (Public Notice) released on March 8, 2012. The *Public Notice* and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–121. The *Public Notice* and related documents also are available on the Internet at the Commission's Web site: http://wireless.fcc.gov/auctions/901/or by using the search function for AU Docket No. 12–25 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

1. In the *Auction 901 Comment Public Notice*, the Bureaus concluded that they would identify census blocks eligible for the Mobility Fund Phase I support to be offered in Auction 901 based on an analysis of the most recent available American Roamer data, from January 2012. A summary of the *Auction 901 Comment Public Notice* was published in the **Federal Register** at 77 Fed. Reg. 7152 (Feb. 10, 2012). With the *Auction 901 Comment Public Notice,* the Bureaus provided, at paragraphs 15, and 18–19, a preliminary list of such blocks using older American Roamer data and stated that they would provide an updated list of potentially eligible census blocks and related updated information upon completion of their analysis of the January 2012 American Roamer data. With the *Auction 901 Updated Potentially Eligible Blocks Public Notice,* (77 FR 9655, February 17, 2012), the Bureaus provided the updated list of potentially eligible blocks based on January 2012 American Roamer data in electronic format as ''Attachment A'' files.

2. Concurrent with the release of *Auction 901 Updated Potentially Eligible Blocks Public Notice,* the Bureaus announced the availability of a map of the updated potentially eligible blocks. The map is an interactive visual representation of data from the updated Attachment A files. The Attachment A files contain more information and generally more detail than is displayed on the map. The map is available at *http://wireless.fcc.gov/auctions/901/and at http://www.fcc.gov/maps/.*

3. The data formats the Bureaus make available are additional formats of the data as shown in the interactive map. These formats, which are available at *http://wireless.fcc.gov/auctions/901/*, are the following:

- Downloadable shapefile
- Web mapping service
- MapBox map tiles

4. The shapefile format is actually four individual files (.dbf, .shp, .shx, and .prj) all with the same prefix. That information is available at: ''Esri Shapefile Technical Description,'' *http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf.* This format is generally recognized as a standard transfer file for GIS data. The shapefile is an accepted transfer in just about every GIS software package.

5. Web mapping service (WMS) is an Open Geospatial Consortium standard for delivering geospatial data over the web. That information is available at *http://www.opengeospatial.org/standards.* The WMS data service can be viewed in two ways. First, the data can be viewed by using the URL. Second, most GIS software allows you to add this service as a layer to your session or project.

6. MapBox map tiles are cached map tiles of the data. With this open source software approach, these image tiles can be joined with other MapBox layers to make new maps. This information is available at *http://mapbox.com/.*

7. For additional information about Auction 901, including an overview of requirements to participate in the auction and proposals for auction procedures, you should consult the Auction 901 Comment Public Notice. As set forth in that public notice, comments were due February 24, and reply comments were due March 9, 2012. As set forth in ''Mobility Fund Phase I Auction; Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges,'' comments and reply comments on census block eligibility challenges are due March 16, 2012, and March 26, 2012, respectively. Public notices and additional information about Auction 901 may be found at *http://wireless.fcc.gov/auctions/901/.*

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2012–6316 Filed 3–14–12; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

DATE AND TIME: Tuesday, March 20, 2012 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–6438 Filed 3–13–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2012.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Georgetown Bancorp, MHC,* Georgetown, Massachusetts; to convert to stock form and merge with Georgetown Bancorp. Inc., and to become a savings and loan holding company by acquiring 100 percent of the voting shares of Georgetown Savings Bank, both in Georgetown, Massachusetts.

Board of Governors of the Federal Reserve System, March 12, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–6302 Filed 3–14–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235; Docket 2011–0001; Sequence 10]

General Services Administration Acquisition Regulation; Information Collection; Price Reductions Clause; Extension of Comment Period

AGENCY: Office of Acquisition Policy; General Services Administration (GSA)

ACTION: Notice; extension of comment period.

SUMMARY: This document extends the comment closing date of the notice of request for comments regarding OMB Control No. 3090–0235, Price Reductions Clause, published in the **Federal Register** at 76 FR 81941, on December 29, 2011.

DATES: Submit comments on or before April 16, 2012.

ADDRESSES: Submit comments identified by Information Collection 3090–0235, Price Reductions Clause, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0235, Price Reductions Clause,'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0235, Price Reductions Clause.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0235, Price Reductions Clause'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0235, Price Reductions Clause.

Instructions: Please submit comments only and cite Information Collection 3090–0235, Price Reductions Clause, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, at (202) 357–9652. Please cite OMB Control No. 3090–0235, Price Reductions Clause.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at GSAR 552.238–75, Price Reductions, used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated. The reason for the burden decrease as it exists now is based on current data updating the number of MAS Schedule contractors.

Dated: March 8, 2012.

Mindy S. Connolly,

Chief Acquisition Officer, U.S. General Services Administration.

[FR Doc. 2012–6273 Filed 3–14–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding

this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Teen Pregnancy Prevention Replication Evaluation Study: Follow-up Data Collection—OMB No. OS–0990–NEW—Office of Adolescent Health in collaboration with the Office of the Assistant Secretary for Planning and Evaluation.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH will jointly oversee with ASPE the Teen Pregnancy Prevention Replication Evaluation Study (TPP Replication Study). The TPP Replication Study will be a random assignment evaluation which will determine the extent to which evidence-based program models that have been shown to be effective in an earlier trial, demonstrate effects on adolescent sexual risk behavior and teenage pregnancy when they are replicated in similar and in different settings and for different populations.

OAH and ASPE are proposing follow-up data collection activity as part of the TPP Replication Evaluation. Respondents will be asked to answer carefully selected questions about risk and protective factors related to teen pregnancy, intermediate outcomes, and behavioral outcomes. Information from this data collection will be used to perform meaningful analysis to determine significant program effects.

ESTIMATED ANNUALIZED BURDEN TABLE

[Reporting burden on study participants]

Form name	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours	Average hourly wage of respondents	Total annual response cost
Impact Evaluation of the Teen Pregnancy Prevention Program Grantees (TPP Evaluation)						
Attachment D: Safer Sex Intervention	1,121	1	30/60	560.5	$7.25	$4,063.63
Attachment E: Reducing the Risk and Cuidate! (youth who have ever had sex)	1,763	1	30/60	881.5	7.25	6,390.87
Attachment F: Reducing the Risk and Cuidate! (youth who have never had sex)	1,175	1	30/60	587.5	7.25	4,259.38
Total	4,059			2,029.5		14,713.88

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–6213 Filed 3–14–12; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Call for Collaborating Partners for National Women's Health Week

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Office on Women's Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS), Office on Women's Health (OWH) invites public and private sector women's health-related organizations to participate in National Women's Health Week (NWHW) as collaborating partners to help create awareness of women's health issues and educate women about improving their health and preventing disease.

DATES: Representatives of women's health organizations should submit expressions of interest by April 13, 2012.

ADDRESSES: Expressions of interest, comments, and questions may be submitted by electronic mail to *jill.wasserman1@hhs.gov* or by regular mail to Jill Wasserman, Office on Women's Health, Department of Health and Human Services, 200 Independence Avenue SW., Room 733E, Washington, DC 20201; or via fax to (202) 690–7172.

FOR FURTHER INFORMATION CONTACT: Jill Wasserman on (202) 205–1952.

SUPPLEMENTARY INFORMATION: The OWH was established in 1991 to improve the health of American women by advancing and coordinating a comprehensive women's health agenda throughout HHS. The office fulfills its mission through competitive contracts and grants to an array of community, academic, and other organizations at the national and community levels. National educational campaigns provide information about the important steps women can take to improve and maintain their health, such as NWHW.

NWHW is a week-long health observance that kicks off on Mother's Day, Sunday, May 13 and ends Saturday, May 19, 2012. NWHW seeks to partner with public sector women's health-related organizations to help

educate women about improving their physical and mental health and preventing disease. With the 2012 theme ''It's Your Time,'' OWH will focus on encouraging women to make their health a top priority and take simple steps for a longer, healthier, and happier life. For more information about National Women's Health Week, please visit *http://www.womenshealth.gov/whw.*

Dated: March 9, 2012.

Nancy C. Lee,

Deputy Assistant Secretary for Health—Women's Health.

[FR Doc. 2012–6286 Filed 3–14–12; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled to be held for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the ''Advisory Group''). The meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.healthcare.gov/prevention/nphpphc/advisorygrp/index.html.*

DATES: The meeting will be held on April 11–12, 2012. Exact start and end times will be published closer to the meeting date at: *http://www.healthcare.gov/prevention/nphpphc/advisorygrp/index.html.*

ADDRESSES: 200 Independence Ave. SW.; Hubert H. Humphrey Building, Room 800; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave. SW.; Hubert H. Humphrey Building, Room 701H; Washington, DC 20201; 202–205–9517; *prevention.council@hhs.gov.*

SUPPLEMENTARY INFORMATION: On June 10, 2010, the President issued Executive Order 13544 to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. This legislation mandated that the Advisory Group was to be established within the Department of Health and Human Services. The charter for the Advisory Group was established by the Secretary of Health and Human Services on June 23, 2010; the charter was filed with the appropriate Congressional committees and Library of Congress on June 24, 2010. The Advisory Group has been established as a non-discretionary Federal advisory committee.

The Advisory Group has been established to provide recommendations and advice to the National Prevention, Health Promotion and Public Health Council (the ''Council''). The Advisory Group shall provide assistance to the Council in carrying out its mission.

The Advisory Group membership shall consist of not more than 25 non-Federal members to be appointed by the President. The membership shall include a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine. There are currently 22 members of the Advisory Group appointed by the President. This will be the fifth meeting of the Advisory Group.

Public attendance at the meeting is limited to the space available. Members of the public who wish to attend must register by 12 p.m. EST April 2, 2012. Individuals should register for public attendance at *prevention.council@hhs.gov* by providing your full name and affiliation. Individuals who plan to attend the meeting and need special assistance and/or accommodations, i.e., sign language interpretation or other reasonable accommodations, should indicate so when they register. The public will have the opportunity to provide comments to the Advisory Group on April 12, 2012; public comment will be limited to 3 minutes per speaker. Registration through the designated contact for the public comment session is also required. Any member of the public who wishes to have printed materials distributed to the Advisory Group for this scheduled meeting should submit material to the designed point of contact no later than 12 p.m. EST April 2, 2012.

Dated: February 29, 2012.

Corinne M. Graffunder,

Alternate Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health Office of the Surgeon General.

[FR Doc. 2012–6291 Filed 3–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3261–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—May 16, 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, May 16, 2012. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on the desirable characteristics of evidence appropriate for Coverage with Evidence Development. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, May 16, 2012 from 7:30 a.m. until 4:30 p.m., Daylight Saving Time (DST).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m. DST, Monday, April 16, 2012. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5 p.m., DST on Monday, April 16, 2012. Speakers may register by phone or via email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. DST, Friday, May 11, 2012.

We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/*.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., DST Friday, May 4, 2012.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via email to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via email at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780). This notice announces the Wednesday, May 16, 2012, public meeting of the Committee. During this meeting, the Committee will discuss desirable characteristics of evidence appropriate for Coverage with Evidence Development. Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. We will no longer be providing paper copies of the handouts for the meeting. Electronic copies of all the meeting materials will be on the CMS Web site no later than 2 business days before the meeting. We encourage the participation of appropriate organizations with expertise in the desirable characteristics of evidence appropriate for Coverage with Evidence Development.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, we may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 19, 2012. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and email address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified that the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

Dated: *March 8, 2012.*

Patrick Conway,

CMS Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–6309 Filed 3–14–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations.

OMB No.: 0970—NEW.

Description: The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-federal costs for the provision of cash and medical assistance to refugees and other eligible persons, along with allowable expenses for the administration of the refugee resettlement program at the State level. States, Wilson/Fish projects (alternative projects for the administration of the refugee resettlement program), and State Replacement Designees currently submit the SF–269 Financial Status Report in accordance with 45 CFR part 92 and 45 CFR part 74. This proposed new data collection would replace the current requirement for the SF–269 Financial Status Report with a Quarterly Report on Expenditures and Obligations that would collect similar financial status data (*i.e.,* amounts of expenditures and obligations) broken down by the four program components: refugee cash assistance, refugee medical assistance, health screening, and services for unaccompanied refugee minors as well as by program administration. This breakdown of financial status data on expenditures and obligations would allow ORR to track program expenditures in greater detail to anticipate any funding issues and to meet the requirements of ORR regulations at 45 CFR 400.211 to collect these data for use in estimating annual costs of the refugee resettlement program. ORR must implement the methodology at 45 CFR 400.211 each year after receipt of its annual appropriation to ensure that the appropriated funds will be adequate for assistance to entering refugees. The estimating methodology prescribed in the ORR regulations requires the use of actual past costs by program component. In the event that the methodology indicates that appropriated funds are inadequate, ORR must take steps to reduce federal expenses, such as by limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance. This proposed single-page report on expenditures and obligations will allow ORR to collect the necessary data to ensure that funds are adequate for the projected need and thereby meet the requirements of both the Refugee Act and ORR regulations.

Respondents: State Governments, Wilson/Fish Alternative Projects, State Replacement Designees

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations	59	4	0.50	118

Estimated Total Annual Burden Hours: 118.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–6218 Filed 3–14–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee Data Submission System for Formula Funds Allocations.

OMB No.: 0970–0043.

Description: The information collection of Refugee Data Submission System for Formula Funds Allocations replaces the ORR–11 Refugee State of Origin Report and is designed to satisfy the statutory requirements of the Immigration and Nationality Act (INA). Section 412(a)(3) of the Act requires the Director of the Office of Refugee Resettlement (ORR) to make a periodic assessment, based on refugee population and other relevant factors, of the relative needs of refugees for assistance and services and the resources available to meet those needs. This includes compiling and maintaining data on the secondary migration of refugees within the United States after arrival. Further, INA 412(c)(1)(B) states that formula funds shall be allocated based on the total number of refugees, taking into account secondary migration.

In order to meet the statutory requirements, ORR requires each state to submit disaggregated individual records containing certain data elements for eligible refugee populations. This revised collection differs from the ORR–11 Refugee State-of-Origin Report process, whereby states submitted the ORR–11 form containing aggregate data on the number of refugees and entrants served whose ''area numbers'' (the first three digits of the social security number) fell into each of several designated numerical ranges. ORR used the information on the ORR–11 to measure secondary migration for the purposes of formula funds allocation to states. The revision is proposed due to the realization that:

(1) The Social Security Administration states that the first three digits of social security numbers (area

number) should not be used for any other purpose than as an individual identifier for book-keeping purposes.

(2) It is possible for individuals to apply for social security numbers from any social security office, not just offices in the state in which they were born or first resided. This is particularly likely in metropolitan statistical areas where individuals may live in one of several states (e.g., the Washington Metropolitan Area). In these cases, the area number of the social security number may be unreliable as a measure of refugees' state of initial resettlement.

(3) In recent years, the Social Security Administration has begun to issue social security numbers whose area number is not connected to any specific state. The submission of individual records via the Refugee Data Submission System for Formula Funds Allocations Web site is a more reliable and secure process for collecting data for the purposes of tracking secondary migration and allocating formula funds. Data submitted by the States via the secure Web site are compiled and analyzed by the ORR statistician for the purpose of refugee secondary services formula funds allocation. The statistician also prepares a summary report, which is included in ORR's Annual Report to Congress.

Respondents: States and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Refugee Data Submission for Formula Funds Allocations	50	1	20	1,000

Estimated Total Annual Burden Hours: 1,000.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–6224 Filed 3–14–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Health Managers Descriptive Study.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity that will provide descriptive data about the Head Start Health Services Area. The goals of the Head Start Health Manager Descriptive Study are (1) to describe the characteristics of Health Managers and related staff in Head Start (HS) and Early Head Start (EHS) programs; (2) to identify the current landscape of health programs and services being offered to children and families; (3) to determine how health initiatives are prioritized, implemented, and sustained; and (4) to identify the programmatic features and policy levers that exist to support health services including staffing, environment, and community collaboration. These objectives will be accomplished through an online survey of all HS/EHS Health Managers, including American Indian/Alaskan Native and Migrant and Seasonal Head Start grantees. The survey responses will be further informed by semi-structured interviews conducted with a subsample of Head Start health managers, teachers, family service workers, and home visitors.

Respondents: The target respondents for this data collection are Head Start Health Managers at the grantee and delegate level; however data will also be collected from Head Start Directors, Teachers, Family Service Workers, and Home Visitors.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Head Start Director Survey	2,870	1	0.25	718
Head Start Health Managers Survey	2,900	1	1.25	3,625
Semi-structured Interviews: Head Start Health Managers	40	1	0.75	30
Semi-structured Interviews: Head Start Teachers, Family Service Workers, and Home Visitors	60	1	0.75	45

Estimated Total Annual Burden Hours: 4,418.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance

Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. Fax: 202–395–6974. Attn: Desk Officer for the Administration for Children and Families.

Dated: March 9, 2012.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2012–6219 Filed 3–14–12; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimates for a Four-Person Household: Notice of the Federal Fiscal Year (FFY) 2013 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Administration for Children and Families, Office of Community Services, Division of Energy Assistance, HHS.

ACTION: Notice of State median income estimates for FFY 2013.

SUMMARY: This notice announces to grantees of the Low Income Home Energy Assistance Program (LIHEAP) the estimated median income of four-person households in each State and the District of Columbia for FFY 2013 (October 1, 2012, to September 30, 2013). LIHEAP grantees that choose to base their income eligibility criteria on these State Median Income (SMI) estimates may adopt these estimates (up to 60 percent) on their date of publication in the **Federal Register** or on a later date as discussed below. This enables grantees to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2012, or the beginning of the grantees' fiscal year, whichever is later, such grantees must adjust their income eligibility criteria so that such criteria are in accord with the FFY 2013 SMI.

The 60 percent of SMI criterion provides one of the maximum income criteria that LIHEAP grantees may use in determining a household's income eligibility for LIHEAP.

The LIHEAP appropriations for FFY 2009 through April 15, 2011 raised this criterion from 60 percent of SMI to 75 percent of SMI for that period. However, no change was made to the LIHEAP authorizing statute. Furthermore, the LIHEAP appropriation for FFY 2012 did not alter this criterion; thus it returned to 60 percent of SMI for FFY 2012.

DATES: *Effective Date:* These estimates become effective at any time between the date of this publication and the later of (1) October 1, 2012; or (2) the beginning of a grantees' fiscal year.

FOR FURTHER INFORMATION CONTACT: Peter Edelman, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade SW., Washington, DC 20447. Telephone: (202) 401–5292, E–Mail: *peter.edelman@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(11) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law (Pub. L.) 97–35, as amended, HHS announces the estimated median income of four-person families for each State, the District of Columbia, and the United States for FFY 2013 (October 1, 2012, through September 30, 2013).

Section 2605(b)(2)(B)(ii) of this Act provides that 60 percent of the median income of four-person families for each State and the District of Columbia (State median income, or SMI), as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP was last authorized by the Energy Policy Act of 2005, Public Law 109–58, which was enacted on August 8, 2005. This authorization expired on September 30, 2007, and reauthorization remains pending.

The SMI estimates that HHS publishes in this notice are 3-year estimates derived from the American Community Survey (ACS) conducted by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau). HHS obtained these estimates directly from the Census Bureau. For additional information about the ACS State median income estimates, including the definition of income and the derivation of medians see *http://www.census.gov/acs/www/Downloads/data_documentation/SubjectDefinitions/2010_ACSSubjectDefinitions.pdf* under ''Income in the Past 12 Months.'' For additional information about the ACS in general, see *http://www.census.gov/acs/www/* or contact the Census Bureau's Social, Economic and Housing Statistics Division at (301) 763–3243.

Under the advice of the Census Bureau, HHS switched to 3-year estimates from single-year estimates to reduce the large year-to-year fluctuations that the single-year estimates tend to generate for certain States and the District of Columbia. HHS plans to use the Census Bureau's ACS-derived SMI three-year estimates for all fiscal years after 2010. For further information about ACS one-year and 3-year estimates, see *http://www.census.gov/acs/www/guidance_for_data_users/estimates/*.

The SMI estimates, like those derived from any survey, are subject to two types of errors: (1) Nonsampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently shift the data into a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample. For additional information about the accuracy of the ACS SMI estimates, see *http://www.census.gov/acs/www/Downloads/data_documentation/Accuracy/MultiyearACSAccuracyofData2010.pdf*.

A State-by-State listing of SMI and 60 percent of SMI for a four-person family for FFY 2013 follows. In using this listing, LIHEAP grantees must regard ''family'' to be the equivalent of ''household'' with regards to setting their income eligibility criteria. This listing describes the method for adjusting SMI for households of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which were published in the **Federal Register** on March 3, 1988, at 53 FR 6824 and amended on October 15, 1999, at 64 FR 55858.

Dated: March 7, 2012.

Jeannie L. Chaffin,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR A FOUR-PERSON FAMILY, BY STATE, FOR FEDERAL FISCAL YEAR (FFY) 2013, FOR USE IN THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

States	Estimated State median income for four-person families [1]	60 percent of estimated State median income for four-person families [2,3]
Alabama	$64,079	$38,447
Alaska	86,658	51,995
Arizona	66,350	39,810
Arkansas	56,975	34,185
California	77,896	46,738
Colorado	81,477	48,886
Connecticut	101,973	61,184
Delaware	85,490	51,294
District of Columbia	76,652	45,991
Florida	65,728	39,437
Georgia	67,276	40,366
Hawaii	87,456	52,474
Idaho	61,631	36,979
Illinois	80,858	48,515
Indiana	69,929	41,957
Iowa	73,972	44,383
Kansas	71,899	43,139
Kentucky	64,119	38,471
Louisiana	66,896	40,138
Maine	71,237	42,742
Maryland	102,002	61,201
Massachusetts	100,228	60,137
Michigan	72,937	43,762
Minnesota	85,577	51,346
Mississippi	57,132	34,279
Missouri	69,727	41,836
Montana	67,097	40,258
Nebraska	71,864	43,118
Nevada	69,197	41,518
New Hampshire	92,216	55,330
New Jersey	102,552	61,531
New Mexico	55,446	33,268
New York	82,222	49,333
North Carolina	66,978	40,187
North Dakota	78,295	46,977
Ohio	72,732	43,639
Oklahoma	61,941	37,165
Oregon	70,957	42,574
Pennsylvania	78,576	47,146
Rhode Island	88,083	52,850
South Carolina	64,303	38,582
South Dakota	69,221	41,533
Tennessee	62,902	37,741
Texas	66,093	39,656
Utah	68,068	40,841
Vermont	76,418	45,851
Virginia	87,209	52,325
Washington	81,797	49,078
West Virginia	60,825	36,495
Wisconsin	77,829	46,697
Wyoming	74,281	44,569

Note: FFY 2013 covers the period of October 1, 2012, through September 30, 2013. The estimated median income for four-person families living in the United States for this period is $74,964. Grantees that use SMI for LIHEAP may, at their option, employ such estimates at any time between the date

[1] Prepared by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau), from three-year estimates from the 2008, 2009 and 2010 American Community Surveys (ACSs). These estimates, like those derived from any survey, are subject to two types of errors: (1) Nonsampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently direct the data into a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample.

[2] These figures were calculated by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance by multiplying the estimated State median income for a four-person family for each State by 60 percent.

[3] To adjust for different sizes of household for LIHEAP purposes, 45 CFR 96.85 calls for multiplying 60 percent of a State's estimated median income for a four-person family by the following percentages: 52 percent for one person, 68 percent for two persons, 84 percent for three persons, 100 percent for four persons, 116 percent for five persons, and 132 percent for six persons. For each additional family member above six persons, 45 CFR 96.85 calls for adding 3 percentage points to the percentage for a six-person family (132 percent) and multiply the new percentage by 60 percent of a State's estimated median income for a four-person family.

of this publication and the later of October 1, 2012 or the beginning of their fiscal years.
[FR Doc. 2012–6220 Filed 3–14–12; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Peer Review of Systems Biology (P50) Grant. Applications

Date: April 5, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C. Craig Hyde, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18A, Bethesda, MD 20892–6200, 301–435–3825, *ch2v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6339 Filed 3–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0092.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use (CBP Form 5125). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 1497) on January 10, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 16, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use,* is used to request the permission of the CBP port director for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by Section 309 of the Tariff Act of 1930, and is provided for by 19 CFR 10.59(e). CBP Form 5125 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_5125.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of increasing the estimated response time from five minutes to twenty minutes. There are no changes to the information collected or to CBP Form 5125.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 165.

Dated: March 12, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–6310 Filed 3–14–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR–5427–N–02]

Protecting Tenants at Foreclosure Act: Additional Guidance on Notification Responsibilities Under the Act With Respect to Occupied Conveyance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional guidance on the notice, entitled ''Protecting Tenants at Foreclosure: Notice of Responsibilities Placed on Immediate Successors in Interest Pursuant to Foreclosure of Residential Property,'' published in the **Federal Register** on June 24, 2009, and supplemented by further information published on October 28, 2010. The October 2010 notice provided guidance on the relationship between the Federal Housing Administration's (FHA's) current regulations on occupied conveyance and the protections for existing tenants under the Protecting Tenants at Foreclosure Act of 2009 (PTFA). This notice provides further guidance on the relationship between FHA regulations and the protections for existing tenants under the PTFA.

FOR FURTHER INFORMATION CONTACT: James Hass, Housing Program Specialist, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410–8000; telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background of PTFA and HUD's June 2009 Notice

The Protecting Tenants at Foreclosure Act of 2009, Title VII of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111–22, approved May 20, 2009) (codified at 12 U.S.C. 5220 note), requires that any immediate successor in interest take a foreclosed residential property subject to the existing lease and provide tenants residing in the property with notice to vacate at least 90 days in advance of the date by which the successor, generally, the purchaser, seeks to have the tenants vacate the property. Except where the purchaser will occupy the property as the primary residence, the term of any bona fide lease entered into before the notice of foreclosure and extending beyond 90 days also remains in effect. The PTFA was enacted during a period when unprecedented numbers of foreclosures were occurring across the country. Often, tenants residing as leaseholders in residential properties become collateral victims in addition to homeowners when foreclosures occur, and are forced to vacate their leaseholds, often with minimal notice. The PTFA ensures that tenants receive appropriate notice of foreclosure and are not abruptly displaced.

Sections 702 and 703 of PTFA define the scope of PTFA's coverage over residential properties. The Section 702 requirements provide tenants with at least 90 days' advance notice to vacate and to preserve the term of any bona fide lease apply to foreclosures on all Federally related mortgage loans or on any dwelling or residential real property. Section 703 makes conforming changes consistent with the Section 702 requirements to the Section 8 rental voucher assistance provisions of the United States Housing Act of 1937 (1937 Act). The protections provided by PTFA sunset on December 31, 2014.

Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) amended PTFA, and extended the PTFA protections to December 31, 2014. Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act also defined when ''date of notice of foreclosure'' occurs. Section 1484 provides in relevant part as follows: ''the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.''

To fall under the Act, a bona fide lease must be entered into prior to the date of the notice of foreclosure, which is defined as ''the date on which complete title to a property has been transferred to a successor entity or person as a result of an order of a court or pursuant to the provisions in a mortgage, deed of trust, or security deed.'' A bona fide lease is one in which: (1) The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or local subsidy. The requirements of the PTFA apply with respect to properties secured by FHA-insured mortgages as well as those in the Section 8 program.

The notice that HUD published on June 24, 2009 (74 FR 3–1–6), addressed the general applicability of PTFA protections to HUD programs, provided basic guidance, and advised where HUD program participants and other interested parties may find more detailed guidance directed to HUD programs. Following issuance of the June 24, 2009, notice, HUD began receiving questions about the interplay of the PTFA notice requirements with the notice requirements of FHA's occupied conveyance regulations. HUD therefore issued a second notice on PTFA to specifically address how the PTFA tenant protections work in the context of FHA regulations.

II. FHA's Occupied Conveyance Regulations—October 28, 2010 Notice

The **Federal Register** notice, published by HUD on October 28, 2010 (75 FR 66385), provided the following guidance on compliance with the FHA's occupied conveyance regulations, and the tenant protections provided by the PTFA.

Upon default of an FHA-insured mortgage, and under FHA's existing regulations, the mortgagee must engage in loss mitigation for the purpose of providing an alternative to foreclosure. Should such loss mitigation efforts be unsuccessful, the mortgagee will generally foreclose and convey the property to FHA in exchange for an FHA mortgage insurance claim. FHA generally requires the mortgagee to convey the property unoccupied, but in certain circumstances, as described in FHA's occupied conveyance regulations at 24 CFR 203.670–203.681, FHA will accept the property occupied. In cases where the regulations would not permit the occupied conveyance of the property, the mortgagee must acquire possession before conveying the property to FHA. Various laws, usually state or local, but now also PTFA, affect possessory action and the length of time

it takes to acquire possession of the property.

FHA's claims regulations at 24 CFR 203.356(b) provide that the mortgagee must exercise ''reasonable diligence'' in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. (Failure to foreclose and evict acquire possession in accordance with this reasonable diligence time frame could lead to curtailment of debenture interest on the mortgagee's FHA insurance claim as described in section 203.402(k) of the regulations.) FHA publishes state-by-state reasonable diligence timeframes by mortgagee letter. At the time of publication of the October 28, 2010, notice, HUD noted that FHA Mortgagee Letter 2005–30 provided that an automatic extension of the reasonable diligence timeframe will be allowed for the actual time necessary to complete the possessory action provided that the mortgagee begins such action promptly. Therefore, FHA regulations and Mortgagee Letters already provide mortgagees the additional time they may need to acquire possession under the PTFA, i.e., in many cases at least an additional 90 days. As mortgagees may have been confused about the interaction between the PTFA and the occupied conveyance regulations, the October 28, 2010, notice served to confirm that: (1) FHA expects mortgagees to comply with the PTFA; and (2) the additional time needed to acquire possession pursuant to the PTFA is automatically included in the reasonable diligence timeframe.

III. FHA Occupied Conveyance Regulations and PTFA Protections—Additional Guidance

Since issuance of the October 28, 2010, notice, mortgagees have sought additional guidance on this subject. This notice provides additional guidance regarding compliance with FHA's occupied conveyance procedures and the tenant protections of PTFA in light of recent changes in state and local laws relating to tenant protection. This guidance is also being provided directly to FHA-approved mortgagees through an FHA mortgagee letter.

Tenant Protections Prior to PTFA. FHA historically required mortgagees to provide all property occupants (including former mortgagors) a Notice of Pending Acquisition (NOPA), within 60 to 90 days prior to the date the mortgagee expected to acquire title to the occupied property. For many tenants, this may have been their first notification that ownership of a property was changing and that they would likely need to relocate in the near future. The NOPA also advised the occupants that there was a possibility of remaining in the property when ownership was conveyed to FHA if the occupants met certain criteria. However, the NOPA also cautioned that any continued occupancy after conveyance to FHA would be temporary.

Prior to enactment of the PTFA on May 20, 2009, leases that did not pre-date the mortgage could usually be terminated by the new owner following completion of foreclosure. Additionally, although there were variations due to state or local law, most eviction actions required that advance notice to vacate be provided to occupants 60 days or less before the effective date of the eviction. The passage of the PTFA changes both of those situations.

PTFA Tenant Protections. The PTFA generally provides, after the date of its enactment, that in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to: (1) A notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant under a bona fide lease to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence. FHA expects mortgagees to comply with the terms of the PTFA. As provided in section 702(a) of the PTFA, nothing in the PTFA shall affect any state or local law that provides longer time periods or additional protections for tenants.

Mortgagee Compliance under PTFA. Before completion of foreclosure, the mortgagee must confirm the identity of all occupants, determine each occupant's possible rights for continued occupancy under the PTFA and state or local law, and attempt to obtain documentation of existing leases and tenancies.

1. *Revised Notice to Occupants of Pending Acquisition (NOPA).* At least 60 days, but not more than 90 days before the mortgagee reasonably expects to acquire title, the FHA mortgagee shall notify the mortgagor and each head of household who is occupying a unit of the property of its potential conveyance to FHA following foreclosure. The notice(s) shall provide a summary of the conditions under which continued occupancy is permissible and other information specified in 24 CFR 203.675(b). A sample Notice to Occupant of Pending Acquisition and related documents to be used for this purpose accompany this notice. Mortgagees should make any additional changes to the NOPA that are required to be in compliance with PTFA, state, or local laws. If the occupant responds to the NOPA and FHA approves occupied conveyance, the mortgagee shall convey the property occupied under FHA's existing occupied conveyance procedures.

Mortgagees must begin using the revised NOPA and related documents, with additional changes that are required to be in compliance with PTFA, state, or local law, no later than July 1, 2012.

2. *Occupancy rights under PTFA and state and local law.* If FHA denies occupied conveyance, the mortgagee must confirm if PTFA is applicable (i.e., whether there is a bona fide lease or tenancy, etc.) or if there is some other occupancy protection under state or local law that would require the mortgagee to delay action to obtain possession of the property. Mortgagees shall fully comply with applicable PTFA and state and local law and provide required notices to occupants.

The additional time needed under the PTFA (or specific state or local laws) to obtain possession of the property is taken into consideration when evaluating compliance with FHA's reasonable diligence timeframe. The mortgagee must retain documentation in the claim file to support the additional time needed to comply with PTFA (or other state or local occupancy requirements). Upon expiration of the tenancy protection, mortgagees are expected to proceed promptly with possessory actions.

3. *Rent Collections.* FHA expects mortgagees to attempt to collect rents payable under bona fide leases and tenancies and, in the event of default, to take possessory action pursuant to the contract terms and applicable law. Any rents received by a mortgagee during the term of the bona fide lease or tenancy must be reflected as a credit on line 115 of Form HUD–27011, Single-Family Application for Insurance Benefits. This form can be accessed at *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14619.pdf.*

4. *Preservation and Protection Costs.* Additional routine preservation and protection costs, including lawn maintenance and inspections, that are incurred as a result of an extended lease or tenancy will be reimbursed pursuant to the schedule in Mortgagee Letter 2010–18, Update of Property and Preservation (P&P) Requirements and Cost Reimbursement Procedures. This mortgagee letter can be accessed at

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14634.pdf.

Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number, 2502–0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

IV. Additional Questions About PTFA and FHA Occupied Conveyance Regulations

Any questions regarding this subject may be directed to HUD's National Servicing Center (NSC). The NSC's toll free number is 877–622–8525; its email address is *Hsg-lossmit@hud.gov.* Persons with hearing or speech impairments may reach NSC's number via TDD/TTY by calling 1–877–TDD–2HUD (1–877–833–2483).

Dated: March 9, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Sample Notice to Occupant of Pending Acquisition (To be prepared and submitted by the mortgagee to all occupants)

NOTICE TO OCCUPANT OF PENDING ACQUISITION

(Name) (Date)

(Street Address)

(Town or City)

(HUD/FHA Case No.)

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA. ESTO ES UN AVISO MUY IMPORTANTE. SI NO ENTIENDE EL CONTENIDO, OBTENGA UNA TRADUCCIÓN INMEDIATAMENTE. SI USTED NO RESPONDE DENTRO DE VEINTE (20) DÍAS, PUEDE QUE TENGA QUE MUDARSE DE LA CASA O APARTAMENTO EN QUE VIVE.

Dear: _____

The mortgage for the property in which you are living is in foreclosure as a result of the property owner's default. Within the next 60 to 90 days, title to the property is expected to be transferred to [NAME OF MORTGAGEE]. Some time thereafter, ownership of the property will probably be transferred to the Secretary of Housing and Urban Development (HUD).

HUD generally requires that there be no one living in properties conveyed to the Secretary as a result of a foreclosure. As the Federal Housing Administration's (FHA) single family program is a mortgage insurance program, it must sell all acquired properties and use the proceeds of sale to help replenish the FHA Mortgage Insurance Fund. It is not a rental program. There are other programs within HUD that assist in making rental housing available.

However, before [NAME OF MORTGAGEE] conveys the property to HUD, you may be entitled to remain in the property for some period of time, pursuant to the Protecting Tenants at Foreclosure Act of 2009 (PTFA) or state or local law. If you are a bona fide tenant (someone other than the mortgagor, or the child spouse or parent of the mortgagor occupying the property pursuant to a bona fide lease or tenancy), a separate notice regarding your occupancy rights under PTFA will be provided to you when complete title to the property is transferred to (name of mortgagee) as a result of an order of a court or pursuant to provisions in the mortgage, deed of trust or security deed.

Instructions: Mortgagees may insert here any language they deem necessary to inform occupants of the conditions under which they might be eligible to remain in the property pursuant to the PTFA or state or local law, and/or for the mortgagee to request information from the occupant that would be needed for the mortgagee to determine whether the occupant qualifies.

If you are not entitled to remain in the property pursuant to the PTFA or state or local law, you may nevertheless be eligible to remain in the property upon conveyance to HUD, if certain conditions are met, as described in Attachment 3, Conditions for Continued Occupancy. To be considered for continued occupancy upon conveyance to HUD, you must submit a written request to HUD within 20 days of the date at the top of this letter. Oral requests are not permitted.

Please use the enclosed Attachment 1, ''Request for Occupied Conveyance'' (form HUD–9539), in making your request as it gives HUD information it needs to make its decision. You must send your request and the enclosed Attachment 2 ''Request for Verification of Employment'' authorization to HUD's Mortgagee Compliance Manager (MCM) at the following address: [MORTGAGEE'S ADDRESS].

If an individual residing in the property suffers from a permanent, temporary, or long-term illness or injury that would be aggravated by the process of moving from the property, please also provide supporting documentation of the illness or injury. This documentation must include a projection of the date that the individual could be moved without aggravating the illness or injury and a statement by a state-certified physician establishing the validity of your claim.

Additional information that you wish to include with your request may be written on additional pages that you attach to the ''Request for Occupied Conveyance'' form.

If HUD approves your request to remain in the property, you will be required to sign a month-to-month lease and pay rent at the prevailing fair market rate. If HUD does not in fact become owner of this property, any decision it may make with respect to your continued occupancy will no longer apply.

Your right to continued occupancy of the property under HUD's Occupied Conveyance policies will only be temporary, depending on the circumstances, as described in Attachment 4, Temporary Nature of Continued Occupancy.

For assistance in finding affordable housing, you may wish to contact one or more of HUD's approved housing counseling agencies. These agencies usually provide services at little or no cost. A counselor may be able to recommend other organizations that can also be of assistance. If you have access to the Internet, you may locate a local housing counseling agency by visiting the following Web page: *www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm.* Alternatively, you may call the HUD Housing Counseling and Referral Line, weekdays between 9 a.m. and 5 p.m. EST. The Referral Line telephone number is (800) 569–4287.

If you have any questions concerning this notice, please contact [NAME AND CONTACT INFORMATION OF MORTGAGEE].

Sincerely,

_____

Signature

Title

Attachments

Attachment 1 (Request for Occupied Conveyance—Form HUD–9539)

Attachment 2 (Request for Verification of Employment) NOTE: Mortgagees may use their own standard employment verification forms.

Attachment 3 (Conditions for Continued Occupancy)

Attachment 4 (Temporary Nature of Continued Occupancy)

Attachment 3 (Conditions for Continued Occupancy) (to Mortgagee's Notice of Pending Acquisition)

HUD's Occupied Conveyance Program

CONDITIONS FOR CONTINUED OCCUPANCY

The following conditions must be met before HUD can approve the occupied conveyance of an acquired property.

1. One or more of the following must be met, as determined by HUD in HUD's sole and absolute discretion pursuant to authority provided in FHA occupied conveyance regulations 24 CFR § 203.670 through § 203.681 and additional guidance provided by the Department:

a. Your occupancy is necessary to protect the property from vandalism;

b. The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months;

c. With respect to two-to-four-unit properties, the marketability of the property would be improved by your continuing occupancy.

d. The high cost of eviction or relocation expenses makes eviction impractical; or

e. An individual residing in the property suffers from a permanent, temporary, or long-term illness or injury that would be aggravated by the process of moving from the property.

2. The house must be habitable (except for approval under condition 1(e)).

3. You must have been living in the house at least 90 days prior to the date the lender acquires title to the house (except for approval under condition 1(e)).

4. You must agree to sign a month-to-month lease at fair market rent on a form prescribed by HUD at the time HUD acquires the property.

5. You must have the financial ability to make the monthly rental payments under the terms of the lease.

6. You must agree to pay one month's advance rent when you sign the lease (except for approval under condition 1(e)).

7. You must allow access to the property during normal business hours:

(a) By HUD representatives for a physical inspection of the property, with two days advance notice.

(b) By HUD contractors doing repairs, with two days advance notice.

(c) By real estate brokers and their clients with two days advance notice.

8. You must disclose the complete and accurate social security number (SSN) assigned to you and to each member of your household.

Attachment 4 (Temporary Nature of Continued Occupancy) (to Mortgagee's Notice of Pending Acquisition)

TEMPORARY NATURE OF CONTINUED OCCUPANCY

This is to advise you that occupancy of HUD-owned property is temporary in all cases and is subject to termination to facilitate preparing the property for sale and completing the sale. Temporary means that your lease arrangement with HUD is subject to termination at the convenience of the government upon 30 day's notice, or otherwise in accordance with applicable law. You should not view your occupancy of the property as a permanent or long-term arrangement. It is HUD's policy to ask you to vacate the property and, if necessary, take appropriate eviction action for the following causes:

1. Your failure to execute the lease.

2. Your failure to pay the required rent, including the initial payment at the time of execution of the lease.

3. Your failure to comply with the terms of the lease.

4. Your failure to allow access to the property upon request to accomplish necessary repairs, inspect the property, or allow real estate brokers to show the property to a prospective purchaser.

5. Necessity to facilitate preparing the property for sale and completing the sale.

6. Assignment of the property by HUD to a different use or program.

[FR Doc. 2012–6297 Filed 3–14–12; 8:45 am]

BILLING CODE 4210–67–P

INTER–AMERICAN FOUNDATION BOARD MEETING

Notice of Sunshine Act Meetings

TIME AND DATE: March 26, 2012, 9 a.m.–1:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open to the public except for the portion specified as closed session as provided in 22 CFR 1004.4(f).

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the December 12, 2011, Meeting of the Board of Directors
- Management Report
- IAF Fellows Mid-Year Conference
- Grantee Perception Report
- Next Meetings
- Executive Session

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the December 12, 2011, Meeting of the Board of Directors
- Management Report
- IAF Fellows Mid-Year Conference
- Grantee Perception Report
- Next Meetings

PORTIONS TO BE CLOSED TO THE PUBLIC:

- Executive Session—Closed session as provided in 22 CFR 1004.4 (f).

CONTACT PERSON FOR MORE INFORMATION:

• Paul Zimmerman, General Counsel, (703) 306–4320.

Paul Zimmerman,

General Counsel.

[FR Doc. 2012–6375 Filed 3–13–12; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Outer Continental Shelf Scientific Committee; Notice of Renewal

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Renewal.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is revising and renewing the Outer Continental Shelf (OCS) Scientific Committee (Committee).

The Committee provides advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of BOEM. The Committee reviews the relevance of the research and data being produced to meet BOEM's scientific information needs for decision-making and may recommend changes in scope, direction, and emphasis.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Clark, Bureau of Ocean Energy Management, Office of Environmental Program, Environmental Sciences Division, Herndon, Virginia 20170–4817, telephone, (703) 787–1716.

Certification

I hereby certify that the renewal of the OCS Scientific Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et. seq.*

Dated: March 9, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–6296 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2012–N070; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before April 16, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Applicant: Wild Wilderness Drive-Through Safari, Gentry, AR; PRT–28258A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to add red ruffed lemur (*Varecia rubra*), Grevy's zebra (*Equus grevyi*), Hartmann's mountain zebra (*Equus hartmannae*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and Dama gazelle (*Nanger dama*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Riverbanks Zoological Park, Columbia, SC; PRT–667921

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Bovidae
Callitricidae
Canidae
Cebidae
Cercopithecidae
Equidae
Felidae
Hominidae
Hylobatidae
Lemuridae
Macropodidae
Pteropodidae
Rhinocerotidae
Suidae
Tapiridae
Ursidae
Bucerotidae
Columbidae
Cracidae
Gruidae
Psittacidae (*does not* include Thick-billed parrots)
Rallidae
Rheidae
Spheniscidae
Sturnidae (*does not* include *Aplonis pelzelni*)
Threskiornithidae
Zosteropidae
Alligatoridae (*does not* include American alligator)
Boidae (*does not* include Mona boa or Puerto Rican boa)
Crocodylidae (*does not* include American crocodile)
Emydidae
Gekkonidae
Iguanidae
Pelomedusidae
Testudinidae
Trionychidae
Varanidae
Viperidae (includes *Crotalus unicolor* but not *Crotalus willardi*)
Cryptobranchidae

Genus

Tragopan

Species

Asian elephant (*Elephas maximus*)

Applicant: Oakland Zoo, Oakland, CA; PRT–199071

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Hylobatidae

Species

Dama gazelle (*Nanger dama*)
Ring-tailed lemur (*Lemur catta*)
Panamanian golden frog (*Atelopus zeteki*)

Applicant: Santa Ana Zoo, Santa Ana, CA; PRT–691733

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Cebidae
Lemuridae

Species

Lar gibbon *(Hylobates lar)*
Maned wolf (*Chrysocyon brachyurus)*
South American tapir (*Tapirus terrestris*)
Pudu (*Pudu puda*)

Applicant: Zoo of Acadiana, LLC, Broussard, LA; PRT–209126

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to add red ruffed lemur (*Varecia rubra),* Siamang (*Symphalangus syndactylus*), South American tapir (*Tapirus terrestris*), barasingha (*Rucervus duvaucelii*), slender-horned gazelle (*Gazella leptoceros*), banteng (*Bos javanicus*), anoa (*Bubalus depressicornis*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), Dama gazelle (*Nanger dama*), Salmon-crested cockatoo (*Cacatua moluccensis*) and Nile crocodile (*Crocodylus niloticus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: 5F Ranch, Zephyr, TX; PRT–66071A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Madera Bonita Ranch, Old Glory, TX; PRT–65707A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Madera Bonita Ranch, Old Glory, TX; PRT–67100A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Y.O. Ranch, Mountain Home, TX; PRT–66048A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Eld's deer (*Rucervus eldii*), barasingha (*Rucervus duvaucelii*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Y.O. Ranch, Mountain Home, TX; PRT–66049A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wildwood Wildlife Park, Minocqua, WI; PRT–66306A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the ring-tailed lemur (*Lemur catta*), brown lemur (*Eulemur fulvus*), cotton-top tamarin (*Saginus oedipus*), leopard (*Panthera pardus*), salmon-crested cockatoo (*Cacatua moluccensis*), Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Prater-Pirkle Land Co., Blanket, TX; PRT–66309A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Prater-Pirkle Land Co., Blanket, TX; PRT–66626A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Cotton Mesa Trophy Whitetail, Wortham, TX; PRT–66631A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Cotton Mesa Trophy Whitetail, Wortham, TX; PRT–66632A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*), from the captive herds maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Mayfield Ranch, Christoval, TX; PRT–67061A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), to enhance their

propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Mayfield Ranch, Christoval, TX; PRT–67162A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*), from the captive herds maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Harkey Ranch, Eldorado, TX; PRT–67060A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Grevy's zebra (*Equus grevyi*), Hartmann's mountain zebra (*Equus hartmannae*), Eld's deer (*Rucervus eldii*), barasingha (*Rucervus duvaucelii*), bontebok (*Damaliscus pygargus pygargus*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), slender-horned gazelle (*Gazella leptoceros*), and Dama gazelle (*Nanger dama*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jimmy Asaff; Sarita, TX; PRT–67291A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Applicant: Jimmy Asaff; Sarita, TX; PRT–67292A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Smithsonian National Zoological Park, Washington, DC; PRT–007870

The applicant request reissuance of their permit for scientific research with captive-born giant pandas (*Ailuropoda melanoleuca*) currently held under loan agreement with the Government of China and under provisions of the USFWS Giant Panda Policy. The proposed research will cover all aspects of behavior, reproductive physiology, genetics, nutrition, and animal health and is a continuation of activities currently in progress. This notification covers activities conducted by the applicant over a 5-year period.

Applicant: Britt Rice, College Station, TX; PRT–66229A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the addax (*Addax nasomaculatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kristi Crosby, Camp Verde, TX; 65098A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Christopher Karcher, San Antonio, TX; PRT–65362A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Forest Land LLC, Sanderson, TX; PRT–66630A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Forest Land LLC, Sanderson, TX; PRT–66629A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: C.H. Guenther & Son Inc., San Antonio, TX; PRT–65755A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: C.H. Guenther & Son Inc., San Antonio, TX; PRT–67110A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lucky Penny Ranch, Killeen, TX; PRT–67448A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lucky Penny Ranch, Killeen, TX; PRT–67449A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Safeguard Investments LTD, Sandia, TX; PRT–67421A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Circle S Ranch, LLC, Mountain Home, TX; PRT–67458A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Circle S Ranch, LLC, Mountain Home, TX; PRT–67459A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Petty Group, LLP, San Antonio, TX; PRT–65763A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Petty Group, LLP, San Antonio, TX; PRT–65764A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Columbus Zoo & Aquarium, Powell, OH; PRT–56216A

The applicant requests a permit to purchase in interstate commerce one male Asian elephant (*Elephas maximus*) born in captivity from Riddle's Elephant and Wildlife Sanctuary, Greenbriar, AR for the purpose of enhancement of the survival of the species.

Applicant: James McNicol, Chandler, AR; PRT–66555A

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–6295 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2012–N055; FF09D00000–FXGO1664091HCC05D–123]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public teleconference of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Teleconference:* Tuesday April 3, 2012, from 2 p.m. to 4 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a teleconference.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit recreational hunting;
2. Benefit wildlife resources; and
3. Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

2. Increasing public awareness of and support for the Sport Wildlife Trust Fund;

3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;

4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;

5. Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;

6. Providing appropriate access to Federal lands for recreational shooting and hunting;

7. Providing recommendation to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and

8. When requested by the agencies' designated ex officio members or the Designated Federal Officer in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will hold a teleconference to consider:

1. Clean Water Act implementation: impacts to habitat and wildlife management

2. Pending legislation affecting public hunting access and opportunities

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

Public Input

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) *no later than*
Listen to the teleconference.	March 26, 2012.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	March 26, 2012.
Give an oral presentation during the teleconference.	March 26, 2012.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the teleconference will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

Meeting Minutes

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Rowan W. Gould,

Acting Director.

[FR Doc. 2012–6251 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000, WYW180710]

Notice of Invitation To Participate; Coal Exploration License Application WYW180710, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Antelope Coal LLC, on a pro rata cost-sharing basis, in its program for the exploration of coal deposits owned by the United States in Campbell County and Converse County, Wyoming.

DATES: This notice of invitation will be published in the *Gillette News-Record* once each week for 2 consecutive weeks beginning the week of March 12, 2012, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Antelope Coal LLC, as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (case file number WYW180710): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003; and, BLM, High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. The written notice should be sent to the following addresses: Antelope Coal LLC, c/o Cloud Peak Energy, Attn: Mark Arambel, Caller Box 3009, Gillette, Wyoming 82717, and BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, at 307–775–6258. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Antelope Coal LLC, has applied to the BLM for a coal exploration license on public land adjacent to its Antelope Coal Mine. The purpose of the exploration program is to obtain structural and quality information about the coal. The BLM regulations at 43 CFR part 3410 require the publication of an invitation to participate in the coal exploration in the **Federal Register**. The Federal coal resources included in the exploration license application are located in the following described lands in Wyoming:

6th Principal Meridian

T. 40 N., R. 71 W.,
Sec. 7, lots 5 through 7 inclusive and lots 10 through 12 inclusive;
Sec. 8, lots 12 and 13;
Sec. 17, lots 1 through 3 inclusive, lots 6 through 11 inclusive, and lots 14 through 16 inclusive;
Sec. 21, lot 1, lots 7 through 10 inclusive and lot 16;
T. 41 N., R. 71 W.,
Sec. 4, lots 5, 12, and lots 13 through 20 inclusive;
Sec. 5, lots 17 and 18;
Sec. 8, lots 1 through 14 inclusive, and N½SE¼
Sec. 9, lots 1 through 8 inclusive;
Sec. 10, lots 4 and 5;
Sec. 17, lots 1 through 16 inclusive;
Sec. 18, lots 13 through 20 inclusive;
Sec. 19, lots 4 through 19 inclusive;
Sec. 20, lots 1 through 13 inclusive;
Sec. 29, lots 4, 5, 12, and 13;
Sec. 30, lots 5 through 16 inclusive;
Sec. 31, lots 5 through 20 inclusive;
Sec. 32; lots 4 and 13;
T. 42 N., R. 71 W.,
Sec. 33; lots 8, 9, 16;
T. 41 N., R. 72 W.,
Sec. 13; lots 9 and 10;
Sec. 24; lots 9, 16; and
Sec. 25; lots 1, 8, 9, 16.

Containing 6,571.620 acres, more or less, in Campbell County and Converse County.

The proposed exploration program is fully described in, and will be conducted pursuant to, an exploration plan to be approved by the BLM.

Authority: 43 CFR 3410.2–1(c)(1)0.

Mary E. Trautner,

Acting State Director.

[FR Doc. 2012–6156 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of a portion of the Base Line in Townships 1 North, Ranges 17, 18 and 19 East, accepted January 26, 2012, and officially filed January 31, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the survey of the east and west boundaries and a portion of the subdivisional lines, Townships 1 North, Ranges 18 East, accepted January 26, 2012, and officially filed January 31, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat (in 8 sheets) representing the survey of Mineral Survey Number 4898, Township 2 South, Range 12 East, and Townships 1 and 2 South, Range 13 East, accepted February 10, 2012, for Group MS4898, Arizona.

This plat was prepared at the request of the Resolution Copper Mining, LLC.

The plat representing the survey of the south boundary, the east boundary and the subdivisional lines, Township 1 South, Range 18 East, accepted January 26, 2012, and officially filed January 31, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the survey of a portion of the east boundary and a portion of the subdivisional lines, Township 2 South, Range 18 East, accepted February 6, 2012, and officially filed February 9, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of portions of the west and north boundaries and the survey of a portion of the subdivisional lines, Township 3 South, Range 18 East, accepted February 6, 2012, and officially filed February 9, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the establishment of the northeast corner of the township and the survey of a portion of the subdivisional lines, Township 1 South, Range 19 East, accepted February 6, 2012, and officially filed February 9, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the south boundary, the establishment of the southeast corner of the township and the survey of the north boundary and a portion of the subdivisional lines, Township 2 South, Range 19 East, accepted February 6, 2012, and officially filed February 9, 2012, for Group 1074, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Dated: March 9th, 2012.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2012–6245 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) and subcommittee for the proposed Monument and Cassia Land Use Plan amendments will meet as indicated below.

DATES: On March 28, 2012, the Twin Falls District RAC subcommittee members for the proposed Monument and Cassia Land Use Plan amendments will meet at the Twin Falls District BLM office, 2536 Kimberly Road, Twin Falls, Idaho. The meeting will begin at 6 p.m. and end no later than 8:30 p.m. The public comment period for the RAC subcommittee meeting will take place 6:15 p.m. to 6:45 p.m. On April 25, the Twin Falls District Resource Advisory Council will tour the Cedar Fields area, and meet at the American Falls Library Community Room, 308 Roosevelt St., American Falls at 1 p.m. The public comment for the RAC meeting will take place 1:15 p.m. to 1:45 p.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho, 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the March 28th meeting, RAC subcommittee members will also discuss rock climbing, camping, staging, trail-building and other recreational issues at Cedar Fields and Castle Rocks. During the April 25th meeting, RAC members will tour the Cedar Fields area in the morning, and meet in the afternoon to discuss a possible recommendation regarding rock climbing, camping, staging, trail-building and other recreational issues at Cedar Fields and Castle Rocks.

Additional topics may be added and will be included in local media

announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html* RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the Twin Falls District, BLM at (208) 736–2352.

Dated: March 5, 2012.

Mary DeAguero,

District Manager, Acting.

[FR Doc. 2012–6252 Filed 3–14–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the California Department of Parks and Recreation. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the California Department of Parks and Recreation at the address below by April 16, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the California Department of Parks and Recreation. The human remains and associated funerary objects were removed from the Cole Creek site (CA–LAK–425), Lake County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the California Department of Parks and Recreation professional staff in consultation with representatives of the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Lower Lake Rancheria, California; Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California.

History and Description of the Remains

In 1975, human remains representing, at minimum, one individual were removed from the Cole Creek site (CA–LAK–425) in Lake County, CA, during salvage excavations conducted by Ron King and Dr. David A. Fredrickson when road construction exposed human remains within Clear Lake State Park. No known individuals were identified. The 10 associated funerary objects are 4 flakes, 3 utilized flakes, 1 blade, 1 core and 1 lot of food remains.

The age of this burial is dated to the late prehistoric period. The site itself has an early component that may date to the Mendocino Aspect or Borax Lake Pattern (circa B.C. 2000–500). Archeology in the Napa Valley shows occupation from about 2,000 or at most 4,000 years ago. It has been suggested that the Wappo language separated from other Yukian languages about B.C. 1000, suggesting that the Wappo may have been the first settlers of the area after the people of the Borax Lake Pattern. This site is within the historically documented geographic territory of the Wappo. The associated funerary objects are consistent with occupation of the site by the Wappo. Based on linguistic evidence and historical geographical association, officials of the California Department of Parks and Recreation have determined that there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the present-day Federally recognized Pomo Indian Tribes.

Determinations Made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the ten associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Lower Lake Rancheria, California; Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, telephone (916) 653–8893, before April 16, 2012. Repatriation of the human remains and associated funerary objects to the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Lower Lake Rancheria, California; Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Lower Lake Rancheria, California; Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6320 Filed 3–14–12; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[DN 2875]

Certain Mobile Electronic Devices Incorporating Haptics; Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Mobile Electronic Devices Incorporating Haptics*, DN 2875; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Immersion Corporation on March 2, 2012. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile electronic devices incorporating haptics. The amended complaint names as respondents Motorola Mobility, Inc. of IL; Motorola Mobility Holdings, Inc. of IL; HTC Corporation of Taiwan; HTC America Holding, Inc., of WA; HTC America, Inc., of WA; HTC (B.V.I.) Corporation of the British Virgin Islands; Exedea, Inc., of TX; Brightstar Corporation of FL; and Brightstar, Inc. of IN.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2875'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 9, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6242 Filed 3–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–754]

Certain Handbags, Luggage, Accessories, and Packaging Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the

recommended relief, specifically issuance of a general exclusion order covering handbags, luggage, accessories, and packaging thereof that infringe U.S. Trademark Registration Nos. 297,594; 1,643,625; 1,653,663; 2,773,107; 2,177,828; 2,181,753; and 1,519,828 registered to complainants Louis Vuitton Malletier S.A. of Paris, France and Louis Vuitton U.S. Manufacturing, Inc., San Dimas, California.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930, as amended, provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on March 5, 2012. Comments should address whether issuance of a general exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the general exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on April 4, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–754'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

Issued: March 12, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6247 Filed 3–14–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0335]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Extension of a Currently Approved Collection; Bureau of Justice Assistance: National Motor Vehicle Title Information System

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice, Office of Justice Programs (Bureau of Justice Assistance) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 77, Number 7, pages 1727–1728, on January 11, 2012, to obtain comments from the public and affected areas. Please note, that the 60 day notice for this collection was previously submitted as a new collection, and has since then been transferred to OJP and assigned a new OMB control. This is an extension of a currently approved collection. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20530.

All comments, and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to M.A. Berry at (202) 353–8643, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, Room 4223, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* National Motor Vehicle Title Information System.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Junk yards. Salvage yards. Motor vehicle insurance carriers. States and local units of general government including the 50 state governments, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Abstract: The reporting of vehicle information by junk yard, salvage yard operators and insurance carriers is expressly required by 49 U.S.C. 30504. Each state is required to make their titling information available to NMVTIS as per 49 U.S.C. 30503(a). Additionally, each state is required ''to establish a practice of performing an instant title verification check before issuing a certificate of title.'' See 49 U.S.C. 30503(b).

Other: None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 13,051 respondents will submit information. Each application takes approximately 30 minutes to complete and is submitted once per vehicle.

If additional information is required, contact: Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–6265 Filed 3–14–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Under the Clean Air Act

Notice is hereby given that on March 7, 2012, a proposed Consent Judgment (''Consent Judgment'') in *United States* v. *110 Sand Co., et al.,* No. CV–09–4209, was lodged with the United States District Court for the Eastern District of New York.

In this action the United States, on behalf of the Environmental Protection Agency (''EPA''), brought claims under the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (hereinafter, ''CAA'' or the ''Act''), against Defendants 110 Sand Company, C. Broman Transportation Corp., Farmingdale Sand Corp., and Broad Hollow Estates, Inc. (collectively, ''Defendants''). Defendants owned and operated a demolition and debris landfill located in Suffolk County at 136 Bethpage-Spagnoli Road Melville, New York. Defendants receive at the landfill construction and demolition debris, including wallboard, which contains gypsum. The decay of gypsum produces landfill gases, including hydrogen sulfide gas. The landfill then collects its hydrogen sulfide emissions through the use of a landfill gas collection system, and combusts the hydrogen sulfide through a flare, producing sulfur dioxide. The Complaint asserts claims against Defendants for penalties and injunctive relief under Section 113(b) of the Act, 42 U.S.C. 7413(b), for violation of the Prevention of Significant Deterioration provisions of the Act, CAA §§ 165–169, 42 U.S.C. 7470–7492, and for causing violations of the National Ambient Air Quality Standards for hydrogen sulfide and sulfur dioxide.

The Consent Judgment provides for, among other things: (1) The continued operation and maintenance of state-of-the-art pollution control technology that Defendants installed following enforcement efforts by the United States and during the pendency of this lawsuit; (2) compliance with emissions limitations; (3) the continued operation of monitoring equipment; (4) the maintenance and continued operation of the Landfill's gas collection system; and (5) payment of a civil penalty of $150,000.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *110 Sand Co., et al.,* D.J. Ref. 90–5–2–1–08944.

During the public comment period, the Consent Judgment may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–6226 Filed 3–14–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application for Explosives License or Permit

ACTION: 30-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms

and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 6, page 1509 on January, 10, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection. If you have questions concerning the collection, contact Christopher R. Reeves at *Christopher.r.reeves@usdoj.gov* or the DOJ Desk Officer at 202–514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households. Abstract:

Need for Collection

The form has been revised to include the new classes (types) of explosives for manufacturers, dealers, importers and users of explosives. The current type codes are obsolete. ATF will now categorize explosives licenses and permits by only six major classes. The classes are: Manufacturer, Dealer, Importer, User, User-Limited and Type 60. The form will still capture the types of explosives materials being manufactured, imported, acquired and used by explosives licensees and permittees, however, they will no longer be classified by type code.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated 10,000 respondents will complete a 1 hour and 30 minutes form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 15,000 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–6262 Filed 3–14–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140—NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Firearms & Explosives Services Division Customer Service Survey

ACTION: 30-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 6, page 1510 on January 10, 2012 allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Thomas DiDomenico at *fesdsurvey@atf.gov* or the DOJ Desk Officer at 202–514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Firearms & Explosives Services Division Customer Service Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The Firearms & Explosives Services Division (FESD) provides dealer licensing and other services related to the importation and transfers of weapons within the firearms and explosives industry. This anonymous survey would allow FESD to gauge customer satisfaction and correct potential deficiencies. Internal audits have demonstrated the need for a division level survey to enhance greater customer satisfaction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The number of respondents cannot be determined because a survey has not been done before. It is estimated that respondents will take five minutes to complete the online survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The total public burden cannot be estimated as the survey is voluntary and the number of respondents cannot be determined.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–6263 Filed 3–14–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium

Notice is hereby given that, on February 23, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Warheads and Energetics Consortium (''NWEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cartridge Actuated Devices, Inc., Fairfield, NJ; Electronic Warfare Associates, Inc., Herndon, VA; Gomez Research Associates, Inc., Huntsville, AL; Custom Analytical Engineering Systems, Inc., Flintstone, MD; Corvid Technologies, Mooresville, NC; Synepsys Technologies Inc., Clearwater, FL; Laserlith Corporation, Grand Forks, ND; Strategic Innovative Solutions, LLC, Ringwood, NJ; TORC Robotics, LLC, Blacksburg, VA; and Nova Training and Technology Solutions, LLC, Garnet Valley, PA, have been added as parties to this venture.

Also, The Curators of the University of Missouri, Columbia, MO, and United Support Solutions, Inc., Cedar Grove, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NWEC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NWEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on November 4, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 25, 2011 (76 FR 72724).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–6284 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on February 16, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Conference Concepts, Inc., San Diego, CA; Harris Corporation, Melbourne, FL; and Northrop Grumman Corporation, Los Angeles, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on November 22, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79218).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–6285 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas

Notice is hereby given that, on February 23, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas (''Eagle Ford'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Hess Corporation, Houston, TX; Chesapeake Energy Corporation, Oklahoma City, OK; Newfield Exploration Co., The Woodlands, TX; and ConocoPhillips Company, Houston, TX. The general area of Eagle Ford's planned activity is to understand mechanical stratigraphy and natural deformation in Eagle Ford Formation and equivalent Boquillas Formation in South-Central and West Texas.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–6282 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on February 24, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Diamondking Inc., Chino, CA; Guangdong OPPO Mobile Telecommunications, Dongguan, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Hyundai Digital Technology Co., Ltd., Kyoungki-do, REPUBLIC OF KOREA; and Vtrek Electronics Co., Ltd., Guangzhou City, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, BBK Electronics Corp., Ltd., Donngguan, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Creative Technology Ltd., Singapore, SINGAPORE; Express Way Limited, Hong Kong, HONG KONG—CHINA; Magnum Semiconductor, Inc., Milpitas, CA; Main Technology Co., Ltd., Taipei Hsien, TAIWAN; Mustek Systems Inc., Hsin-Chu, TAIWAN; Technicolor S.A. (formerly known as Thomson S.A.), Boulogne Billancourt, FRANCE; Wistron Corporation, Taipei Hsien, TAIWAN; and Ocean Way International Co., Ltd., Macau, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on November 23, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79218).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–6279 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OPEN MOBILE ALLIANCE

Notice is hereby given that, on February 27, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Mobile Alliance (''OMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following members have been added as parties to this venture: Beijing Leadtone Wireless Ltd., Haidian District, Beijing, PEOPLE'S REPUBLIC OF CHINA; Birdstep Technology AB, Stockholm, SWEDEN; Bluefish Technologies Holdings APS, Birkerod, DENMARK; Cambridge Silicon Radio Limited, Cambridge, UNITED KINGDOM; Cybage Software Private Limited, Pune, Maharashtra, INDIA; DGIST (Daegu Gyeongbuk Institute of Science & Technology), Dalseong-Gun, Daegu, REPUBLIC OF KOREA; Flextronics (China) Electronics Technology Co., Ltd., Haidian District, Beijing, PEOPLE'S REPUBLIC OF CHINA; ICERA Inc., Bristol, UNITED KINGDOM; Logos Solvo Ltd, Ebene, Mauritius, DENMARK; Mavenir Systems, Richardson, TX; mquadr.at software engineering & consulting GmbH, Vienna, AUSTRIA; Oberthur Technologies S.A., Nanteroie Cedex, FRANCE; Smartontech Co., Ltd., Ebene, Mauritius, DENMARK; Speago Oy, Helsinki, FINLAND; TCT Mobile Limited; Nanshan District, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; and Telecommunication Metrology Center of MIIT, Haidian District, Beijing, PEOPLE'S REPUBLIC OF CHINA.

Also, the following members have withdrawn as parties to this venture: 1–800 Mobiles Inc., New York, NY; Ad & Tel FMG, Inc., Seocho-gu, Seoul, REPUBLIC OF KOREA; airwide solutions inc., Longueuil, Quebec, CANADA; ArcSoft Inc., Fremont, CA; Bouygues Telecom, Boulogne Billancourt Cedex, FRANCE; BROADCOM GPS SPAIN SL, Irvine, CA; Cellular GmbH, Hamburg, GERMANY; Celtius Oy, Helsinki, FINLAND; Colibria AS, Lysaker, NORWAY; Communology GmbH, Cologne, GERMANY; ConDel

Technologies Inc., Tai-Yuan, St. Jubei, TAIWAN; Crealab SRL, Rome, ITALY; Danal Entertainment Inc., Seongnam-si, Gyeonggi-do, REPUBLIC OF KOREA; decontis GmbH, Loebau, GERMANY; Dimark Software, Inc., Cupertino, CA; EnSoft Co., Ltd., BundangGu, Seongnam City, REPUBLIC OF KOREA; FancyFon Software Ltd., Cork, IRELAND; Funambol, Pavia, ITALY; Future Dial, Inc., Sunnyvale, CA; Garmin International Inc., Olathe, KS; GlobalLogic Inc., San Jose, CA; GMIT GmbH, Berlin, GERMANY; GMV Soluciones Globales Internet, S.A.U., Madrid, SPAIN; GoldSpot Media Inc., Sunnyvale, CA; Handmark, Inc., Kansas City, MI; Hewlett-Packard, Cupertino, CA; iAnywhere Solutions Inc., Corvalis, OR; IBM Corporation, Somers, NY; IfeN GmbH, Poing, GERMANY; INNOACE Ltd., Twanak-gu, Seoul, REPUBLIC OF KOREA; Irdeto, Access B.V., Ka Moofodorp, NETHERLANDS; kt mhows Inc., Kangnam-gu, Seoul, REPUBLIC OF KOREA; Kvaleberg AS, Oslo, NORWAY; Mobixell Networks Ltd., Raanana, ISRAEL; Movial Applications, Helsinki, FINLAND; Myriad Group AG, Le Bourget Du Lac, FRANCE; NDS Limited, Middlesex, UNITED KINGDOM; O3SIS AG, Overath, GERMANY; Openwave, Redwood City, CA; PacketVideo Corp., San Diego, CA; Palm, Inc., Sunnyvale, CA; POINT–I CO., Ltd., Gwanjin-gu, Seoul, REPUBLIC OF KOREA; Prim'Vision, Villeneuve-Loubet, FRANCE; RedKnee, Inc., Mississauga, Ontario, CANADA; Roundbox, Inc., Bridgewater, NJ; Sagem Wireless, Paris, FRANCE; Sofia Digital Ltd., Tampere, FINLAND; Spectracore Technologies, San Diego, CA; Sprint, Lenexa, KS; SS8 Networks, Milpitas, CA; Syniverse Technologies, Inc., Tampa, FL; Tactel AB, Jonkoping, SWEDEN; Telcordia, Piscataway, NJ; Telstra Corporation Limited, Melbourne, AUSTRALIA; U-blox AG, Thalwil, SWITZERLAND; and Z-Think, LLC., Alpharetta, GA.

The following members have changed their names: Synclore Corporation to KII Corporation, Minato-ku, Tokyo, JAPAN; LG Telecom LTD. to LG Uplus Corp., Mapo-gu, Seoul, REPUBLIC OF KOREA; Mtag to Mobile Tag SAS, Paris, FRANCE; and Sagem Orga GmbH to Morpho Cards GmbH, Paderborn, GERMANY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on June 1, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2011 (76 FR 43346).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–6292 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110—NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested; Monthly Return of Human Trafficking Offenses Known to Law Enforcement

ACTION: 30-day Notice of Information Collection Under Review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 6, pages 1511–1512, on January 10, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until (insert the date 30 days from the date this notice is published in the **Federal Register**). This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Monthly Return of Human Trafficking Offenses Known to Law Enforcement

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* No Form number.

Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. Brief Abstract: This collection is needed to collect information on human trafficking incidents committed throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,108 law enforcement agency respondents that submit monthly for a total of 217,296 responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 18,108 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitutional Square, 145 N Street

NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–6264 Filed 3–14–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Dominican Republic-Central America-United States Free Trade Agreement; Notice of Determination Regarding Review of Submission #2011–03

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The Office of Trade and Labor Affairs (OTLA) gives notice that on February 22, 2012, Submission #2011–03 was accepted for review pursuant to Article 16.4.3 of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR).

Father Christopher Hartley filed the submission with OTLA on December 22, 2011. The submitter alleges that the Government of the Dominican Republic (GODR) failed to fulfill its obligations under Chapter 16 of the CAFTA–DR (the Labor Chapter). U.S. Submission #2011–3 alleges that the GODR's actions or lack thereof denied workers their rights under the laws of the Dominican Republic relating to freedom of association, the right to organize, child labor, forced labor, the right to bargain collectively, and acceptable conditions of work. These allegations are supported by statements which, if substantiated, could constitute a failure on the part of the Dominican Republic to comply with its obligations under the CAFTA–DR.

The objective of the review of the submission will be to gather information so that OTLA can better understand the allegations therein and publicly report on the U.S. Government's views regarding whether the GODR's actions were consistent with its obligations under the Labor Chapter of the CAFTA–DR.

DATES: *Effective Date:* February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, OTLA, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5303, Washington, DC 20210. Telephone: (202) 693–4900. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Article 16.4.3 of the Labor Chapter of the CAFTA–DR provides for the receipt and review of public communications (''submissions'') regarding labor law matters in Central America and the Dominican Republic. A **Federal Register** notice issued on December 21, 2006 informed the public that the OTLA had been designated as the office to serve as the contact point for implementing the CAFTA–DR's labor provisions. The same **Federal Register** notice informed the public of the Procedural Guidelines that OTLA would follow for the receipt and review of public submissions (71 FR 76691 (2006)). These Procedural Guidelines are available at *http://www.dol.gov/ilab/programs/otla/proceduralguidelines.htm.* According to the definitions contained in the Procedural Guidelines (Section B) a ''submission'' is ''a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter or Part Two of the NAALC.''

The Procedural Guidelines specify that OTLA shall consider six factors, to the extent that they are relevant, in determining whether to accept a submission for review:

1. Whether the submission raises issues relevant to any matter arising under a labor chapter or the NAALC;

2. Whether a review would further the objectives of a labor chapter or the NAALC;

3. Whether the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review;

4. Whether the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations or commitments under a labor chapter or the NAALC;

5. Whether the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and

6. Whether the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed.

U.S. Submission #2011–3 alleges that the GODR's actions or lack thereof denied workers their rights under the laws of the Dominican Republic relating to freedom of association, the right to organize, child labor, forced labor, the right to bargain collectively, and acceptable conditions of work.

In determining whether to accept the submission, OTLA considered the relevant factors in light of the statements in the submission and its supporting documentation. The submission clearly identifies the submitter, is signed and dated, and upon clarification, was sufficiently specific to determine the nature of the request and permit an appropriate review. It also raises issues relevant to the Labor Chapter of the CAFTA–DR, citing numerous problems in the sugar sector that it believes are in violation of the Dominican Republic's labor laws. The submission raises pertinent issues that would further the objectives of the Labor Chapter and that could, if substantiated, constitute a failure of the GODR to comply with its obligations under the Labor Chapter. The submitter provided additional information, including a list of articles of the Labor Code, the Constitution of the Dominican Republic, and ILO Conventions that he believes were violated by the allegations in the submission. The submitter provided information on his efforts to seek appropriate relief for these alleged violations under domestic laws and to raise the issues with GODR officials. The submission also notes that the issues in the submission have been raised in international fora, but to date, they have not been remedied. OTLA has not received similar submissions. Accordingly, OTLA has accepted the submission for review.

OTLA's decision to accept the submission for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objective of the review of the submission will be to gather information so that OTLA can better understand the allegations therein and publicly report on the issues raised by the submission. OTLA will complete the review and issue a public report within 180 days, unless circumstances, as determined by OTLA, require an extension of time, as set out in the Procedural Guidelines. The public report will include a summary of the review process, as well as any findings and recommendations.

Signed at Washington, DC, on February 22, 2012.

Sandra Polaski,

Deputy Undersecretary for International Affairs.

[FR Doc. 2012–6225 Filed 3–14–12; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL TRANSPORTATION SAFETY BOARD

Attentive Driving: Countermeasures for Distraction Forum

The National Transportation Safety Board (NTSB) will convene a forum, Attentive Driving: Countermeasures for Distraction, which will begin at 8:30 a.m., Tuesday, March 27, 2012. NTSB Chairman Deborah A.P. Hersman will serve as Chairman of the forum, and all five NTSB Board Members will serve as members of the Board of Inquiry. The forum is open to all and attendance is free (no registration). The forum will be streamed live via Webcast. Webcast archives are generally available by the end of the next day are archived for a period of 3 months from the date of the event.

Distracted driving is a serious safety risk on our highways, as evidenced by both accident data and laboratory research. The purpose of this one-day forum is to examine countermeasures that can mitigate distracted driving behaviors. Forum panels will consider the findings of distracted driver research and will promote ongoing and future efforts to promote attentive driving and eliminate distracted driving accidents. Specific countermeasures to be addressed include distracted driving laws and enforcement, changing attitudes and behaviors through education and outreach, and technology and design countermeasures.

Expert panelists will include representatives of safety advocacy groups, vehicle manufacturers, law enforcement, government, and the research community. Below is the preliminary agenda:

Tuesday, March 27, 2012

Opening Remarks

Panel 1: Attention to Non-Driving Tasks
Panel 2: Distracted Driving Laws and Enforcement
Panel 3: Attentive Driving: Changing Attitudes and Behaviors
Panel 4: Technology and Design Countermeasures

Summary and Closing Remarks

The full agenda and list of participants can be found at: *www.ntsb.gov/attentivedriving*

The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E., SW., Washington, DC. The public can view the forum in person or by Webcast at *www.ntsb.gov.*

Individuals requesting specific accommodations should contact Ms. Rochelle Hall at (202) 314–6305 by Friday, March 23, 2012.

NTSB Media Contact: Mr. Terry Williams, (202) 314–6403 (Washington, DC), *williat@ntsb.gov*.

NTSB Forum Manager: Ms. Deborah Bruce, *bruced@ntsb.gov*.

March 9, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–6217 Filed 3–14–12; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0271]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 28, 2011 (76 FR 72982).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 20, ''Standards for Protection Against Radiation.''

3. *Current OMB approval number:* 3150–0014.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Annually for most reports and at license termination for reports dealing with decommissioning.

6. *Who will be required or asked to report:* NRC licensees and Agreement State licensees, including those requesting license terminations. Types of licensees include civilian commercial, industrial, academic, and medical users of nuclear materials. Licenses are issued for, among other things, the possession, use, processing, handling, and importing and exporting of nuclear materials, and for the operation of nuclear reactors.

7. *An estimate of the number of annual responses:* 43,505 (6,215 from NRC licensees and 37,290 from Agreement State licensees)

8. *The estimated number of annual respondents:* 21,000 (3,000 NRC licensees and 18,000 Agreement State licensees)

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 640,521 (91,503 from NRC licensees and 549,018 from Agreement State licensees)

10. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC and by Agreement States. These standards require the establishment of radiation protection programs, maintenance of radiation protection programs, maintenance of radiation records recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC and to Agreement States of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 16, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs

(3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at (202) 395–4718.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 9th day of March, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–6214 Filed 3–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 753; NRC–2011–0277]

Model Safety Evaluation for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–505, Revision 1, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4B''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of the model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–505, Revision 1, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4B.''

The proposed amendment would modify the TS requirements related to Completion Times (CTs) for Required Actions to provide the option to calculate a longer, risk-informed CT. A new program, the Risk-Informed Completion Time (RICT) Program, is added to TS Section 5, Administrative Controls. The proposed change revises the Improved Standard Technical Specification, NUREG–1430, –1431, –1432, –1433, and –1434.

ADDRESSES: Please refer to Docket ID NRC–2011–0277 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0277. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* TSTF–505, Revision 1, is available in ADAMS under Accession No. ML111650552; the model application is available in ADAMS under Accession No. ML12032A065. The model SE for plant-specific adoption of TSTF–505, Revision 1, is available under ADAMS Accession No. ML120200401. The NRC staff disposition of comments received to the Notice of Opportunity for Public Comment announced in the **Federal Register** on November 29, 2011 (76 FR 73737), is available under ADAMS Accession No. ML120200484.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12 D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1774 or email at *Michelle.Honcharik@nrc.gov* or Ms. Kristy Bucholtz, Technical Specifications Branch, Mail Stop: O–7 C2A, Division of Safety Systems, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1295 or email; *Kristy.Bucholtz@nrc.gov.*

SUPPLEMENTARY INFORMATION: TSTF–505, Revision 1, is applicable to all nuclear powered reactors. TSTF–505 revises the TS to (1) add a new RICT program to the Administrative Controls of TS, (2) modify selected Required Actions to permit extending the CTs, provided risk is assessed and managed within an acceptable configuration risk management program (CRMP), (3) add new Conditions, Required Actions, and CTs to address conditions not currently addressed in TS, and (4) add a new example in TS Section 1.3, to describe application of the RICT Program. The model SE will facilitate approval of plant-specific adoption of TSTF–505, Revision 1.

The NRC staff has reviewed the model application for TSTF–505 and has found it acceptable for use by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff SE and the applicable technical bases, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the Notice of Availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–505, Revision 1. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license will require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–505, Revision 1.

Dated at Rockville, Maryland, this 6th day of March 2012.

For the Nuclear Regulatory Commission.

John R. Jolicoeur,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6259 Filed 3–14–12; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Notice of Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 28, 2012, 9:30 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Executive Committee Reports

(2) Elimination of Director of Operations Position/Stand Alone Field Service Organization

Portion closed to the public:

(A) Director of Administration Position

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: March 12, 2012.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2012–6419 Filed 3–13–12; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–6; OMB Control No. 3235–0395; SEC File No. 270–349.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 15g–6—Account statements for penny stock customers (17 CFR 240.15g–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15g–6 requires brokers and dealers that sell penny stocks to provide their customers monthly account statements containing information with regard to the penny stocks held in customer accounts. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 209 broker-dealers will spend an average of 78 hours annually to comply with this rule. Thus, the total compliance burden is approximately 16,302 burden-hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov*.

Dated: March 12, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6318 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66551; File No. SR–Phlx–2012–27]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Order Fees and Rebates for Adding and Removing Liquidity in Select Symbols

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 1, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I of the Exchange's Fee Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' by amending the transaction fees and rebates for Complex Orders and proposing a new rebate.

The Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will increase certain Complex Order[3] rebates, create a new rebate and also increase certain fees. The proposed changes will enable the Exchange to continue to reward market participants that add liquidity to the Exchange and allow the Exchange to compete more effectively respecting Complex Orders. The Complex Order fees and rebates being amended appear in Section I of the Exchange's Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.''[4]

The Exchange proposes to: (1) Amend the Customer Rebate for Adding Liquidity, (2) create a new Rebate for Removing Liquidity, (3) amend the Fee for Removing Liquidity for all participants that are assessed such a fee, and (4) create a volume tier for certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] The Select Symbols are listed in Section I of the Fee Schedule.

market participants that transact significant volumes of Complex Orders on the Exchange. Currently, the Exchange's Complex Order fees and rebates are as follows:

	Customer	Directed participant	Market maker	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity	$0.30	$0.00	$0.00	$0.00	$0.00	$0.00
Fee for Adding Liquidity	0.00	0.10	0.10	0.20	0.20	0.20
Fee for Removing Liquidity	0.00	0.30	0.32	0.35	0.35	0.35

First, the Exchange is amending the Customer Complex Order Rebate for Adding Liquidity. Specifically, the Exchange proposes to increase the Customer Complex Order Rebate to Add Liquidity from $0.30 per contract to $0.32 per contract to further incentivize market participants to route Customer Complex Orders to the Exchange.

Second, the Exchange proposes to create a new Customer Complex Order rebate to attract additional Customer Complex Orders to the Exchange. The new rebate, entitled ''Rebate for Removing Liquidity,'' will pay a rebate of $0.06 per contract for each contract of liquidity removed by an order designated as a Customer Complex Order. The Exchange currently pays no rebate and assesses no fee for removing Customer Complex Order liquidity. The Exchange will pay no rebate for other market participants removing Complex Order liquidity. This is similar to the existing Complex Order Rebate for Adding Liquidity where the Exchange offers a rebate only with respect to Customer Complex Orders. The Exchange believes that increasing the Customer Complex Order Rebate for Adding Liquidity and creating a new Customer Rebate for Removing Liquidity will incentivize market participants to transact Customer Complex Orders on the Exchange.

Third, the Exchange proposes to increase the Complex Order Fees for Removing Liquidity for the Directed Participant,[5] Market Maker,[6] Firm, Broker-Dealer and Professional[7] categories. The fee for Directed Participant transactions would increase from $0.30 to $0.32 per contract; the fee for Market Makers would increase from $0.32 to $0.37 per contract; the fee for Firms would increase from $0.35 to $0.38 per contract; the fee for Broker-Dealers would increase from $0.35 to $0.38 per contract; and the fee for Professionals would increase from $0.35 to $0.38 per contract. As a result, the new Complex Order Fees for Removing Liquidity would be as follows:

%	Customer	Directed participant	Market maker	Firm	Broker-dealer	Professional
Fee for removing liquidity	$0.00	$0.32	$0.37	$0.38	$0.38	$0.38

Finally, the Exchange will provide a new volume incentive to Market Makers. The Exchange has four categories of market makers: Specialists,[8] ROTs,[9] SQTs [10]and RSQTs.[11] The Exchange proposes to offer a volume incentive to Market Makers that execute more than 25,000 contracts per day in a month of Complex Orders, either adding or removing liquidity, in Select Symbols. Market Makers that meet the aforementioned volume criteria will receive a $0.01 per contract reduction of both the Directed Participant and Market Maker Complex Order Fees for Removing Liquidity, as applicable, on all of their transactions for the month. For example, assume Market Maker ABCD executes 30,000 contracts per day of Complex Orders, including 5,000 contracts of Complex Orders that would be assessed the Directed Participant fee and 5,000 contracts per day of Complex Orders that would be assessed the Market Maker fee. In that case, Market Maker ABCD's Directed Participant Complex Orders transactions in the month would be assessed a Directed Participant Fee for Removing Liquidity of $0.31 per contract instead of the new $0.32 per contract, and Market Maker ACBD's Market Maker Complex Orders would be assessed a Market Maker Fee of $0.36 per contract instead of the new $0.37 per contract. For the purposes of the $0.01 reduction in the aforementioned fees, the Exchange also proposes to aggregate the trading activity of Market Makers where there is at least 75% common ownership between member organizations.

The Exchange is not proposing any amendments to Parts A or C of Section I of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and

[5] The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader (''SQT'') or Remote Streaming Quote Trader (''RSQT'') resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[6] A ''Market Maker'' includes Specialists (*see* Rule 1020) and Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[7] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A ROT includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Rule 1014 (b)(i) and (ii).

[10] An SQT is defined in Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[11] An RSQT is defined in Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

other persons using its facilities. The Exchange also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

Customer Rebates

Customer Complex Orders are becoming an increasingly important segment of options trading. The Exchange believes that it is reasonable to increase the current Customer Complex Order Rebate for Adding Liquidity to $0.32 per contract and create a new Customer Complex Order Rebate for Removing Liquidity of $0.06 per contract, because the Exchange seeks to incentivize market participants to direct and transact a greater number of Customer Complex Orders at the Exchange. Creating these incentives and attracting Customer Complex Orders to the Exchange, in turn, benefits all market participants through increased liquidity at the Exchange. A higher percentage of Customer Complex Orders leads to increased Complex Order auctions and better opportunities for price improvement.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates to Customers and not other market participants. Customer Complex Order flow brings unique benefits to the marketplace in terms of liquidity and order interaction. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer Complex Orders. The Exchange believes that it is equitable and not unfairly discriminatory to increase the current Customer Complex Order Rebate for Adding Liquidity to $0.32 per contract and create a new Customer Complex Order Rebate for Removing Liquidity of $0.06 per contract, because the Exchange will uniformly pay these rebates to all Customer orders from any member organization.

Fee for Removing Liquidity

The Exchange believes that it is reasonable to increase the Complex Order Fees for Removing Liquidity for Directed Participants, Market Makers, Firms, Broker-Dealers and Professionals so that the Exchange can offer increased rebates to Customers. As previously noted, the Exchange is proposing to increase the Customer Complex Order Rebate for Adding Liquidity and offer a new Customer Complex Order Rebate for Removing Liquidity.

The Exchange believes that it is equitable and not unfairly discriminatory to increase the Complex Order Fees for Removing Liquidity for Directed Participants, Market Makers, Firms, Broker-Dealers and Professionals because, the Exchange is increasing these fees for all market participants, except Customers who are not assessed a fee, to position itself to offer greater Customer Complex Order rebates. The Exchange is consistently assessing lower Complex Order Fees for Removing Liquidity to Directed Participants and Market Makers as compared to Firms, Broker-Dealers and Professionals, because of the requisite quoting obligations applicable to Market Makers. Market Makers [14] have burdensome quoting obligations to the market which do not apply to Firms, Professionals and Broker-Dealers. Also, Market Makers that receive Directed Orders [15] have higher quoting obligations compared to other Market Makers and therefore are assessed a lower fee when they transact with a Customer order that was directed to them for execution as compared to Market Makers. Firms, Broker-Dealers and Professionals are being assessed the same $0.38 per contract fees. Customers are not assessed a Fee for Removing Liquidity, as is the case on competing exchanges.[16]

With respect to the proposed Complex Order Fees for Removing Liquidity for Directed Participant transactions as compared to Market Maker transactions, the Exchange provides a deeper analysis below and its basis for proposing a $0.32 per contract Complex Order Directed Participant Fee for Removing Liquidity and a $0.37 per contract Complex Order Market Maker Fee for Removing Liquidity. In summary, the Exchange's Fees for Removing Liquidity, for both Single contra-side and Complex Order transactions, for the Directed Participant categories are two cents lower than the Fees for Removing Liquidity for the Market Maker categories.[17] As explained above, Market Makers that receive Directed Orders have higher quoting obligations as compared to other Market Makers and therefore are assessed a lower fee. The fee differentials today reflect the additional obligation of a Market Maker that accepts directed orders when compared to a Market Maker that does not accept directed orders for both Single contra-side and Complex Order transactions. The Exchange is now proposing to increase the differential between the Directed Participant and Market Maker transaction fees from $0.02 per contract to $0.05 per contract for Complex Order transactions to also reflect the increased costs that are incurred by such Market Makers that enter into order flow arrangements at a cost and without the benefit of a guaranteed allocation. Market Makers that accept Directed Orders transacting Single contra-side orders today are entitled to a guaranteed allocation which is why the Exchange is distinguishing between these types of orders in assessing fees between the Market Maker and Directed Participant categories. The Exchange will discuss below its rationale for why the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that in order to attract Customer Complex Orders in an intensely competitive environment it must continue to adjust its fees and rebates, which benefits all market participants for the good of investors.

The Directed Participants and Market Makers Categories

Specialists, ROTs, SQTs and RSQTs are Market Makers. Such Market Makers may also be categorized as Directed Participants when such Market Makers execute against a Customer order directed to that Market Maker for execution by an Order Flow Provider (''OFP'').[18] For example, Market Maker A is assessed the Directed Participant category fee for trading against a Customer order directed to it for execution by an OFP. Market Maker A is not assessed the Directed Participant category fee for executing a Customer order directed to different Market Maker, but rather is assessed the Market Maker category fee.[19] It is important to note that a Market Maker, at the time of the trade, is unaware of the identity of the contra-party to the trade. In other words, it is only sometime after the trade occurs that the Market Maker learns whether the Market Maker or Directed Participant fees will be assessed on a particular transaction.[20]

[14] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[15] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[16] *See* the Chicago Board Options Exchange Incorporated's (''CBOE'') Fees Schedule.

[17] Today, the Exchange assesses Directed Participants a fee of $0.36 per contract and Market Makers a fee of $0.38 per contract for Single contra-side transactions and the Exchange assesses Directed Participants a fee of $0.30 per contract and Market Makers a fee of $0.32 per contract for Complex Order transactions.

[18] The term ''Order Flow Provider'' (''OFP'') means any member or member organization that submits, as agent, orders to the Exchange. *See* Rule 1080(l)(i)(B).

[19] Neither a Market Maker nor a Directed Participant is entitled to a rebate for transacting a Customer Complex Order today.

[20] This distinction holds true today for Market Makers and Directed Participants executing either Single contra-side transactions (Part A of Section I

The proposed amendments to the Fees for Removing Liquidity apply only to Complex Orders.[21] Market Makers receive no allocation guarantee when a Customer Complex Order is directed to them by an OFP and the order is executed.[22] Also, only Customer Complex Order flow which is directed to a Market Maker by an OFP and is executed by that particular Market Maker is eligible for the Directed Participant fees for Complex Orders.[23] When a Market Maker executes against a Customer Complex Order the Market Maker may do so by responding to an auction,[24] executing against an order on the Complex Order Book (''CBOOK''), or sweeping a resting Customer Complex Order.[25] The Customer Complex Order may also be executed against existing quote and or limit orders on the limit order book for the individual components of the Complex Order.[26] In each of these cases, the order will trade based on the best price or prices available pursuant to Exchange Rules.[27] Therefore, in order to enjoy the benefits of trading against a directed Complex Customer order by receiving a lower transaction fee (the Directed Participant Complex Order Fee for Removing Liquidity), the transaction must: (i) Occur at the best price; and (ii) be directed, by an OFP, to the particular Market Maker that executed the order.

Currently, on the Exchange, an average of 14.5% of Customer Complex directed orders trade with the Market Maker to which they are directed.[28] All market participants may compete equally for Customer Complex Order executions, even if that Customer Complex Order is directed to a specific Market Maker. All Market Makers have the ability to incentivize an OFP to direct or preference an order if they desire to enter into, for example, a payment for order flow arrangement with an OFP. A Market Maker that pays for such Customer Complex Order flow cannot control whether it executes an order directed to it, because that Market Maker must compete equally against other market participants and as previously stated must be at the best price. While all market participants enjoy the benefits of the liquidity that such order flow brings to the market, not all market participants incur the additional expense of paying an OFP for such order flow. The Exchange believes that this additional expense should be considered in assessing fees to Market Makers that attract directed order flow to the Exchange for the benefit of all market participants.

A Market Maker that executes a Customer Complex Order on a non-directed basis pays a fee of $0.32 per contract today (Market Maker Complex Order Fee for Removing Liquidity). A Market Maker that executes a Customer Complex Order on a directed basis pays a fee of $0.30 per contract today (Directed Participant Complex Order Fee for Removing Liquidity) plus the additional cost associated with the order flow. The Exchange believes that the Customer Complex Order rebates may partially compensate Market Makers for payments they owe to the OFP for the Customer order flow.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to raise the Market Maker Complex Order Fee for Removing Liquidity from $0.32 to $0.37 per contract and raise the Directed Participant Complex Order Fee for Removing Liquidity from $0.30 to $0.32 per contract. Generally, a Market Maker will be assessed the Market Maker Fee for Removing Liquidity in Complex Orders when the Market Maker is not executing a Customer order intended for that Market Maker. Moreover, in a given month the effective Complex Order Fee for Removing Liquidity for a Market Maker that also has executions subject to the Directed Participant rate is approximately $0.02 below the Market Maker Complex Order Fee for Removing Liquidity.[29]

The Exchange bases its belief that the proposed fees are reasonable, in part, on an analysis of the level of price improvement currently received by Customer Complex Orders trading in an auction process. Based on an analysis of the week of October 10, 2011, Customer Complex Orders received price improvement 29% of the time and the average level of price improvement was $0.059 per option or $5.90 per contract for options receiving price improvement. Market Makers compete in offering price improvement in auctions. The significant difference in magnitude between the proposed $0.03 per contract increased fee differential (between Market Makers and Directed Participants) and the extent of price improvement supports the Exchange's belief that the proposed fee is reasonable and will have a negligible impact on Directed and non-Directed Market Makers.

New Volume Discount

The Exchange is further incentivizing Market Makers by providing an opportunity to lower the Market Maker and Directed Participant Complex Order Fees for Removing Liquidity, as applicable, when a Market Maker executes more than 25,000 Complex Order contracts (either adding or removing liquidity) per day in a month. The Exchange proposes to reduce, by $0.01 per contract, the Market Maker and Directed Participant Complex Order Fees for Removing Liquidity, as applicable on all of their transactions for the month (''Added Incentive''). The Exchange believes that the Added Incentive will encourage all Market Makers to transact additional order flow at the Exchange because of the fee reduction. All Market Maker Complex Order contracts will be counted toward the 25,000 contracts per day in a month. The Exchange also believes that this Added Incentive to Market Makers that pay for directed orders will encourage those Market Makers to continue to pay for such orders and provide liquidity to

of the Fee Schedule) or Complex Orders (Part B of Section of the Fee Schedule). When a Single contra-side transaction is executed against the individual components of a Complex Order, the Single contra-side part of the order will be subject to the fees in Part A of the Fee Schedule and the individual components will be subject to the fees in Part B.

[21] The Exchange is not proposing to amend the fees in Section I, Part A applicable to Single contra-side transactions.

[22] Complex Orders can be distinguished from Single contra-side transactions with respect to allocation guarantees applicable to Directed Specialists, Directed ROTs, Directed SQTs and Directed RSQTs pursuant to Rule 1014(g)(viii). Directed Specialists, Directed ROTs, Directed SQTs and Directed RSQTs are guaranteed a 40% allocation with respect to Single contra-side transactions eligible as a Directed Order.

[23] All other types of directed non-Customer order flow is not eligible for Directed Participant pricing.

[24] The Complex Order Live Auction (''COLA'') is the auction for eligible Complex Orders. *See* Rule 1080, Commentary .08.

[25] A COLA Sweep is when a Phlx XL participant bids and/or offers on either or both sides of the market during the COLA Timer (a timing mechanism which is a counting period not to exceed 5 seconds) by submitting one or more bids or offers that improve the cPPBO (the best net debit or credit price for a Complex Order Strategy based on the PBBO for individual components of such Complex Order Strategy). *See* Rule 1080, Commentary .08.

[26] In this scenario the Customer order is ''legged'' against interest present in the disseminated market.

[27] *See* Rule 1080.

[28] This statistic is based on Customer Complex Order data from September 2011 to January 2012 and ranges from (7.2% to 17.94%). During this period, Customer Complex Orders received by the Exchange were directed on average at least 95% of the time.

[29] For example if a Market Maker, that is the intended recipient of a Customer Complex Order, only executes the Customer Complex Order 14.5% of the time (paying the Directed Participant Complex Order fee of $0.32 per contract), then that Market Maker is paying the proposed Market Maker Complex Order fee of $0.37 per contract the other 85.5% of the time. The effective Complex Order Fee for Removing Liquidity for that Market Maker is $0.3613 in a given month, less than $0.01 below the rate paid by a Market Maker that never receives a Customer Complex Order directed to it for execution. Approximately 80% of Market Makers executing Customer Complex Orders receive an order directed to it for execution.

the market even without a guaranteed allocation in Complex Orders, because the Added Incentive would benefit Market Makers whether directed or not, but, in the instance the Market Maker is assessed a Directed Participant fee, the benefit is greater. The Exchange believes that its proposal to allow Market Makers to aggregate trading activity where there is at least 75% common ownership between member organizations is reasonable, because this would allow member organizations to also obtain the Added Incentive by combining transaction fees where the common ownership is met. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap.[30] The Exchange believes that permitting member organizations with at least 75% common ownership to aggregate fees to obtain the Added Incentive is equitable and not unfairly discriminatory because the ability to aggregate would apply uniformly to all member organizations that are at least 75% commonly owned, but chose to operate under separate entities.

The Exchange desires to continue to encourage Market Makers to enter into order flow arrangements by assessing a lower Directed Participant Fee for Removing Liquidity, as compared to the Market Maker Fee for Removing Liquidity. The Exchange believes that offering a Directed Participant fee that is a lower Fee for Removing Liquidity than the Market Maker Fee to Remove Liquidity offsets costs incurred by these Market Markers that pay for order flow and assume the risk of possibly being assessed the same Fee for Removing Liquidity as a Market Maker who did not enter into similar arrangements. Today, options exchanges aggressively compete for Complex order flow. In January 2012, based on data from the Options Price Reporting Authority (''OPRA''), the average daily equity options complex order transactions on the various option exchanges totaled 117,539. The combined total for the last six months of 2011 was 593,286. With respect to market share, the six options exchanges handling complex orders had market share in complex orders ranging from 2.4% to 40.1% in January 2012.

The benefit that a Market Maker brings to the Exchange when it pays for order flow is not an insignificant one and this benefit should not go unrewarded. Market Makers who pay for order flow must still compete for that order flow with other Exchange participants in order to reap benefits. This competition provides the Exchange greater execution quality, which also benefits all participants.

The Exchange believes that the proposed Market Maker and Directed Participant Complex Order Fees for Removing Liquidity and the Added Incentive are reasonable, equitable and not unfairly discriminatory because: (i) Market Makers are not entitled to guaranteed allocations for directed Complex Orders; [31] (ii) all Market Makers have an equal opportunity to incentivize an OFP to direct an order to it for execution on the Exchange; (iii) only Customer orders that are directed by an OFP and executed by the intended Market Maker receive the Complex Order Directed Participant fee; [32] (iv) the proposed Directed Participant and Market Maker Complex Order fees are less than the fees assessed to Firms, Professionals and Broker-Dealers because of obligations carried by those Market Makers which do not burden other participants; (v) Market Makers are unaware of the identity of the contra-party at the time of the trade and are also required to execute at the best price, pursuant to Exchange Rules, against an order intended for them by an OFP in order to be assessed the Directed Participant Complex Order Fee for Removing Liquidity (the only benefit) which does not happen more than 80% of the time; (vi) order flow arrangements benefit all market participants equally through added liquidity; and (vii) the Added Incentive will further encourage Market Makers to respond more aggressively in the COLA, with respect to Customer orders, and sweep resting orders in CBOOK thereby improving execution quality of Customer Complex Orders.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates offered to be insufficient. Accordingly, the fees that are assessed by the Exchange and the rebates it pays for options overlying the various Select Symbols in Complex Orders must remain competitive with fees and rebates charged/paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[30] *See* Section II of the Exchange's Fee Schedule.

[31] Unlike Complex Orders, Single contra-side orders are governed by Rule 1014. Specifically, Directed Orders that are executed electronically shall be automatically allocated as follows: (A) First, to customer limit orders resting on the limit order book at the execution price; (B) Thereafter, contracts remaining in the Directed Order, if any, shall be allocated automatically as follows: (1) The Directed Specialist (where applicable), shall be allocated a number of contracts that is the greater of: (a) the proportion of the aggregate size at the NBBO associated with such Directed Specialist's quote, SQT and RSQT quotes, and non-SQT ROT limit orders entered on the book at the disseminated price represented by the size of the Directed Specialist's quote; (b) the Enhanced Specialist Participation as described in Rule 1014(g)(ii); or (c) 40% of the remaining contracts. *See* Rule 1014(g)(viii). Thereafter, SQTs and RSQTs quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price shall be allocated contracts according to a formula specified in Rule 1014(g)(viii). If any contracts remain to be allocated after the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers (as defined in Rule 1080(b)(i)(C)) that have placed limit orders on the limit order book which represent the Exchange's disseminated price shall be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book.

[32] Other markets discount their directed fee for other classes of market participants in addition to customers. For example, NYSE Amex assesses a an [sic] options market maker that is non directed a fee of $0.17 per contract and am [sic] options market maker that is directed a fee of $0.15 per contract. *See* NYSE Amex's Fee Schedule. Phlx only assesses the Directed Participant Fee for Removing Liquidity with respect to Customer orders.

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–27 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6229 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66557; File No. SR–EDGA–2012–06]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.9

March 9, 2012.

Pursuant to Section 19(b)(2) [sic] of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce an additional routing option to Rule 11.9 to provide Users [3] with increased access to multiple sources of liquidity and greater flexibility in routing orders. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *www.directedge.com*, at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend Rule 11.9(b)(3) to add an additional routing strategy. In connection with the introduction of the subject routing strategy, the Exchange also proposes to amend Rule 11.5(c)(7) so that the definition of a Mid-Point Peg Order is consistent with the functionality of this new routing strategy.

In particular, the Exchange proposes to add the RMPT routing strategy in Rule 11.9(b)(3)(t) to allow an order to access additional sources of liquidity. RMPT is a routing option under which a Mid-Point Peg Order [4] checks the System for available shares and any shares that remain unexecuted are then sent sequentially to destinations on the System routing table that support midpoint eligible orders. This allows orders sent through the RMPT strategy to interact with such midpoint eligible orders. If any shares remain unexecuted after routing, they are posted on the EDGA book as a Mid-Point Peg Order, unless otherwise instructed by the User.

Consequently, the Exchange also seeks to amend the definition of a Mid-Point Peg Order to allow for order routing pursuant to the RMPT routing strategy. Rule 11.5(c)(7) currently states that ''Mid-Point Peg Orders are not eligible for routing pursuant to Rule 11.9(b)(2) and are not displayed on the Exchange''. The Exchange proposes to carve out an exception to allow Users to elect to route the Mid-Point Peg Order pursuant to the RMPT routing strategy, as defined in Rule 11.9(b)(3)(t), to account for this new routing option. This revised definition allows for greater clarity and consistency between the behavior of the Exchange's order types and routing options, resulting in increased transparency for the User.

The Exchange believes that the proposed introduction of the routing option described above will provide Users with increased access to multiple sources of liquidity and greater flexibility in routing orders without having to develop their own complicated routing strategies.

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 1.5(cc)[sic].

[4] As defined in Rule 11.5(c)(7).

The Exchange will notify its Members in an information circular of the exact implementation date of this rule change, which will be no later than May 31, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed introduction of the routing option described above will provide Users with increased access to multiple sources of liquidity and greater flexibility in routing orders without having to develop their own complicated routing strategies. As such, the User benefits from more options, potentially improved execution prices at midpoint prices, and a more efficient marketplace. In addition, the Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and protect investors and the public interest in that it promotes transparency to investors through the codification of the addition of the new routing strategy and its amendment to an existing order type, the Mid-Point Peg Order, in the Exchange's rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(6)[7] thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.[8]

The rule change is designed to provide market participants with a wider variety of options when availing themselves of EDGA's order routing and execution services. By offering additional routing options, EDGA hopes to benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs. EDGA provides these services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, the changes proposed in this rule filing do not burden competition, because the Exchange can only succeed in attracting order flow if it offers investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning marketplace.

Furthermore, the Exchange believes that this rule filing is non-controversial because it codifies the use of a voluntary routing strategy that is offered to all Members equally. In addition, the potential midpoint executions are widely available through analogous order types on other exchanges[9] and result in more efficient, improved executions for potential investors.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *See* BATS Rule 11.9(c)(9) (''Mid-Point Peg Orders''); see also, NASDAQ Rule 4751(f)(4) (''Midpoint Peg'' orders); NYSE Arca Equities Rule 7.31(h)(5) (''Mid-Point Passive Liquidity Orders''); EDGX Rule 11.5(c)(7) (''Mid-Point Match Orders'').

available publicly. All submissions should refer to File Number SR–EDGA–2012–06 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6235 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66559; File No. SR–EDGA–2012–07]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 29, 2012 the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a technical amendment to the description of Footnote 9 and Flag CL to reflect the Commission's approval of the BATS BZX Exchange (''BATS BZX'') as a primary listing exchange.[4] Therefore, Footnote 9 will state that Flag O will be yielded and a fee of $0.0005 per share will be assessed if an order is routed to NYSE Arca & BATS BZX's closing process. This fee in footnote 9 ($0.0005 per share) gives a flat rate for the NYSE Arca & BATS BZX's closing processes, which is lower than other primary listing markets. Flag CL will apply to orders routed to a primary listing market's closing process except NYSE Arca and BATS BZX. In addition, the Exchange proposes to revise the descriptions on Flags CL, 8, and 9 to broaden their applicability to several routing strategies rather than just ROOC.[5] Therefore, the Exchange proposes that Flag CL state ''Routed to listing market closing process except NYSE Arca & BATS BZX.'' The Exchange proposes conforming amendments to Flags 8 and 9 to delete the ROOC routing strategy from the descriptions of these flags.

The Exchange proposes to delete Flag H, which represents all non-displayed orders that add or remove liquidity, and bifurcate it by replacing it with Flags HA and HR. Flag HA will identify all non-displayed orders that add liquidity to EDGA and the Exchange will assess a fee of $0.0010 per share. Flag HR will identify all non-displayed orders that remove liquidity from EDGA and the Exchange will assess a fee of $0.0010 per share. Additionally, footnote 2 is proposed to be revised to read ''rate contingent upon Member adding *or removing* (emphasis added) greater than 1,000,000 shares hidden on a daily basis * * * '' as both Flags HA and HR count toward this tier since they are both forms of hidden liquidity. This change allows Members who utilize both forms of hidden liquidity (add and remove) to satisfy this tier. Footnote 4 is proposed to be clarified that only non-displayed orders that *add liquidity* count toward the following tier listed there: ''If a Member, on a daily basis, measured monthly, posts more than 1% of the Total Consolidated Volume (''TCV'') in average daily volume on EDGA, including all non-displayed orders (H Flag), then the Member will receive a rebate of $0.0005 per share. TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month prior to the month in which the fees are calculated. If a Member, on a daily basis, measured monthly, posts more than .25% of the TCV on EDGA, including all non-displayed orders (H Flag), and removes more than .25% of TCV in average daily volume, then the Member will receive a rebate of $0.0005 per share.'' To correspond with these changes, footnotes 2 and 4 are proposed to be appended to Flag HA and footnote 2 is proposed to be appended to Flag HR. Finally, the references to the yielded flags (B, H, V, Y, 3–4) in text of footnotes 2 and 4 [sic] are duplicative of the footnotes next to the applicable Flags in the fee schedule and are therefore proposed to be deleted to simplify the schedule.

The Exchange proposes to amend Flag 9 and add new Flag 10 to its fee schedule. At this time, NYSE Arca offers its Members a rebate of $0.0021 for orders that add liquidity on Tapes A or C and a rebate of $0.0022 for orders that add liquidity on Tape B. The Exchange proposes to amend Flag 9 to account for the pass-through of the NYSE Arca rebate for adding liquidity through Tapes A or C and to create Flag 10 to account for the pass-through of the NYSE Arca rebate for adding liquidity on Tape B. Finally, the Exchange proposes to make technical amendments to Flags N, 3, and 9 to replace the ''and'' connector with ''or'' (i.e., ''Tapes A *or* C'' instead of ''Tapes A *and* C'') to make these references accurate.

The Exchange proposes to add Flag PA for orders that utilize the midpoint routing strategy RMPT [6] and add

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* Securities and Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] *See* EDGA Exchange Rule 11.9(b)(3)(n).

[6] *See* SR–EDGA–2012–06 (February 24, 2012).

liquidity to EDGA. The Exchange proposes to assess a charge of $0.0010 per share.

The Exchange proposes to add Flag PT for orders that utilize the midpoint routing strategy RMPT [7] and remove liquidity. The Exchange proposes to assess a charge of $0.0010 per share.

The Exchange proposes to add Flag PX for orders that utilize the midpoint routing strategy RMPT [8] and are routed to other destinations on the Exchange's System routing table. The Exchange proposes to assess a charge of $0.0020 per share.

In SR–EDGA–2011–39,[9] the Exchange amended several routing options contained in Rule 11.9(b)(3) to allow Users [10] more discretion if shares remain unexecuted after routing. In particular, Rule 11.9(b)(3)(c)(i)–(iii) was amended to provide that Users may elect that any remainder of an order be posted to another destination on the System routing table. In conjunction with this amendment, the Exchange proposes to create the following new flags: [11]

The Exchange proposes to add Flag RB for orders that are routed from EDGA to Nasdaq OMX BX and add liquidity. The Exchange proposes to assess a charge of $0.0018 per share to account for the pass-through of the Nasdaq OMX BX fee for adding liquidity.

The Exchange proposes to add Flag RC for orders that are routed from EDGA to the National Stock Exchange, Inc. (''NSX'') and add liquidity. The Exchange proposes to offer Members a rebate of $0.0026 per share to account for the pass-through of the NSX rebate for adding liquidity.

The Exchange proposes to add Flag RM for orders that are routed from EDGA to the Chicago Stock Exchange, Inc. (''CHX'') and add liquidity. The Exchange proposes to assess no charge to account for the pass-through of the CHX fee for adding liquidity.

The Exchange proposes to add Flag RS for orders that are routed from EDGA to the Nasdaq OMX PSX (''PSX'') and add liquidity. The Exchange proposes to offer Members a rebate of $0.0024 per share to account for the pass-through of the PSX rebate for adding liquidity.

The Exchange proposes to add Flag RW for orders that are routed from EDGA to the CBOE Stock Exchange, LLC (''CBSX'') and add liquidity. The Exchange proposes to assess a charge of $0.0017 per share to account for the pass-through of the CBSX fee for adding liquidity.

The Exchange proposes to add Flag RY for orders that are routed from EDGA to the BATS BYX and add liquidity. The Exchange proposes to assess a charge of $0.0003 per share to account for the pass-through of the BATS BYX fee for adding liquidity.

The Exchange proposes to add Flag RZ for orders that are routed from EDGA to the BATS BZX that add liquidity. The Exchange proposes to offer Members a rebate of $0.0025 per share to account for the pass-through of the BATS BZX rebate for adding liquidity to BATS BZX.

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed technical amendments to Footnotes 2 and 4 and Flags 3, 9, and N add additional transparency to its fee schedule for investors. The Exchange believes that the proposed technical amendments to Footnote 9 and Flag CL to include BATS BZX as one of the primary listing exchanges adds additional transparency to its fee schedule for investors as it brings the schedule up-to-date to account for a new listing exchange. The Exchange also believes that the amendments to Flags 8, 9, and CL to remove the specific ''ROOC routing strategy'' from those flags descriptions provides additional transparency to the fee schedule by broadening those flags applicability to several routing strategies. This encourages Members to utilize the Exchange to route to various destinations. The Exchange believes that the proposed amendment to delete Flag H and replace it with Flags HA and HR support the quality of price discovery, promote market transparency and improve investor protection by adding additional transparency to its fee schedule for Members by more precisely delineating for Members whether they have posted hidden liquidity or removed hidden liquidity.

In addition, the amendment to footnote 2 to allow Members that remove hidden liquidity (Flag HR), rather than just add hidden liquidity (Flag HA), to achieve a favorable rate of $0.0010 per share opens this tier to those Members who remove hidden liquidity. The Exchange believes that providing an additional way to achieve the lower fee of $0.0010 per share (instead of $0.0030 per share) represents an equitable allocation of reasonable dues, fees, and other charges since it allows Members another means to achieve this lower fee and encourages Members to add to or remove liquidity from EDGA which is greater than 1,000,000 shares hidden on a daily basis. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of lower fees.

The Exchange believes that the rate for flags PA/PT (the RMPT routing strategy adding/removing liquidity) is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other person using its facilities. The rate of $0.0010 for Mid-Point Peg Orders routed through the RMPT routing strategy is equitable in that Mid-Point Peg Orders behave in a similar fashion to non-displayed orders, which are currently priced at $0.0010 per share. Mid-Point Peg Orders like non-displayed orders are non-displayed orders that remain hidden on the Exchange's book at various price points. The rate is also comparable to fees for non-displayed liquidity on other exchanges. For example, Nasdaq OMX BX charges $0.0018 to add non-displayed liquidity,[14] while BATS BYX charges $0.001 to add non-displayed (hidden) liquidity to its order book.[15] In addition, EDGA believes that it is reasonable and equitable to charge the same rates for non-displayed orders, and it is non-discriminatory because the charge will apply uniformly to all Members.

The Exchange believes the proposed fee of $0.0020 associated with Flag PX is reasonable and equitable as it represents a flat rate charged by different exchanges and is consistent

[7] *Id.*

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 65902 (December 6, 2011), 76 FR 77286 (December 12, 2011).

[10] As defined in EDGA Exchange Rule 1.5(cc) [sic].

[11] These flags account for all postable destinations that are not already accounted for by other flags on the fee schedule.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Nasdaq OMX BX fee schedule at: *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[15] *See* BATS BYX fee schedule at: *http://www.batstrading.com/FeeSchedule.*

with how other exchanges pass through charges plus or minus a differential for orders routed to a different exchange. The rate represents a flat routing rate for EDGA members. The flat-rate provides simplicity for Members instead of passing through the actual rates that EDGA receives from various destinations on its schedule. This type of rate is similar to other rates that EDGA charges, such as the flat rates for the ROUT routing strategy (yielding Flag RT and priced at $0.0025 per share) and for Flag 7 executions ($0.0027 per share). In this rate, EDGA takes into account the rates that it is charged or rebated when routing to other destinations. It is also consistent with the processing of similar routing strategies by EDGA's competitors, such as Nasdaq's DOTM routing strategy [16] for which Nasdaq charges $0.0030 per share. The Exchange believes that the proposed fee is non-discriminatory in that it applies uniformly to all Members.

In addition, the Exchange believes that the proposed pass-through of rates for Flags RZ, 9, 10, RB, RC, RM, RS, RW, and RY represent an equitable allocation or reasonable dues, fees and other charges since it reflects the pass-through of the rates associated with transactions done on other exchanges, as described above. In addition, EDGA believes that it is reasonable and equitable to pass-through certain rates to its Members. The Exchange also believes that the proposed pass-through of rates is non-discriminatory because they apply to all Members.

The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

[16] Nasdaq's DOTM routing strategy posts on a primary listing market for the open and then acts like Nasdaq's STGY routing strategy for the rest of the trading session. *See* NASDAQ Rule 4758 and NASDAQ Pricing List at: *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–07 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6237 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66569; File No. SR–Phlx–2012–28]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to the MSCI EAFE Index

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 1, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 1079, 1009A and 1101A to list and trade new options on the MSCI EAFE Index based upon the Full Value MSCI EAFE Index (''Full Value MSCI EAFE Index'').[3]

The Exchange also proposes to create a new Rule 1109A entitled ''MSCI EAFE Index'' which provides additional detailed information pertaining to the index as required by the licensor.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rules 1079 (FLEX Index, Equity and Currency Options), 1009A (Designation of the Index) and 1101A (Terms of Option Contracts) to list and trade P.M. cash-settled, European-style options, including FLEX[4] options and LEAPS,[5] on the MSCI EAFE (Europe, Australasia, and the Far East) Index. Specifically, the Exchange proposes to list and trade long-term options on the Full Value MSCI EAFE Index (''MSCI EAFE LEAPS'').[6] The Exchange also proposes to create a new Rule 1109A entitled ''MSCI EAFE Index'' which provides additional detailed information pertaining to the index as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc.

The MSCI EAFE Index is a free float-adjusted market capitalization index[7] that is designed to measure the equity market performance of developed markets, excluding the U.S. and Canada. The MSCI EAFE Index consists of component securities from the following twenty-two (22) developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

Index Design and Composition

The MSCI EAFE Index is designed to measure international equity performance. It consists of component securities from countries that represent developed markets outside of North America: Europe, Australasia and the Far East. The Index is maintained by MSCI.[8] The Index was launched on December 31, 1969.

The MSCI EAFE Index is reviewed on a semi-annual basis. The index review is based on MSCI's Global Investable Markets Indices Methodology. A description of the methodology is available at *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf*. The MSCI EAFE Index consists of large and midcap components from countries classified by MSCI as developed and excludes North America.

Index Calculation and Index Maintenance

The base index value of the MSCI EAFE Index was 100, as of December 31, 1969. On June 1, 2011, the index value of the MSCI EAFE Index was 1727.187. The MSCI EAFE Index is calculated in U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the closing of the last market on which the components are traded. The methodology used to calculate the value of the MSCI EAFE Index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes.[9] The level of the MSCI EAFE Index reflects the free float-adjusted market value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in the MSCI EAFE index by the index divisor.[10]

Static data is distributed daily to clients through MSCI as well as through major quotation vendors, including Bloomberg L.P. (''Bloomberg''), FactSet Research Systems, Inc. (''FactSet'') and Thomson Reuters (''Reuters''). Real time data is distributed at least every 15 seconds using MSCI's real-time calculation engine to Reuters, Bloomberg, SIX Telekurs and FactSet.

The MSCI EAFE Index is monitored and maintained by MSCI. Adjustments to the MSCI EAFE Index are made on a daily basis with respect to corporate events and dividends. The MSCI EAFE Index is generally updated on a quarterly basis in February, May, August and November of each year to reflect amendments to shares outstanding and free float and full index reviews are conducted on a semi-annual basis in May and November of each year for purposes of rebalancing the index.

Exercise and Settlement Value

The settlement value for expiring options on the MSCI EAFE Index would be based on the closing prices of the component stocks on the last trading day prior to expiration, usually a Friday. The last trading day for expiring contracts is the last business day prior to expiration, usually the third Friday of the expiration month. The index multiplier is $100. The Options Clearing Corporation would be the issuer and guarantor.

Contract Specifications

The MSCI EAFE Index is a broad-based index, as defined in Exchange

[3] The Exchange has entered into a license agreement with MSCI Inc. (''MSCI'') to list this product.

[4] FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX index options may have expiration dates within five years. *See* Exchange Rules 1079 and 1101A.

[5] LEAPS or Long Term Equity Anticipation Securities are long term options that generally expire from twelve to thirty-nine months from the time they are listed.

[6] The MSCI EAFE ETF is one of the top ten in the United States based on assets and trades a large volume with respect to ETFs today.

[7] The free float adjusted market capitalization is used to calculate the weights of the securities in the indices. MSCI defines the free float of a security as the proportion of shares outstanding that is deemed to be available for purchase in the public equity markets by international investors.

[8] MSCI is a provider of investment decision support tools.

[9] Additional information about the methodology for calculating the MSCI EAFE Index can be found at: *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf*.

[10] A divisor is an arbitrary number chosen at the starting date of an index to fix the index starting value. The divisor is adjusted periodically when capitalization amendments are made to the constituents of the index in order to allow the index value to remain comparable over time. Without a divisor the index value would change when corporate actions took place and would not reflect the true value of an underlying portfolio based upon the index.

Rule 1000A. Options on the MSCI EAFE Index would be European-style and P.M. cash-settled.[11] The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. E.T. (Philadelphia Time)), as set forth in Exchange Rules 101 and 1101A at Commentary .01, would apply to options on the MSCI EAFE Index. The expiration date for this index is the Saturday following the third Friday of the expiration month.

The Exchange also notes that the MSCI EAFE Index is a broad-based index as defined in Exchange Rule 1000A(b)(11).[12] In addition, the Exchange proposes to create specific listing and maintenance standards for options on the MSCI EAFE Index in Exchange Rule 1009A(h). Specifically, in proposed Rule 1009A(h)(i)(1) through (10) the Exchange proposes to require that the following conditions are satisfied: (1) The index is broad-based, as defined in Rule 1000A(b)(11); (2) Options on the index are designated as P.M.-settled index options; (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) The index consists of 500 or more component securities; (5) All of the component securities of the index will have a market capitalization of greater than $100 million; (6) No single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the MSCI EAFE Index; (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index; (8) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange; (9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and (10) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, the Exchange proposes to require the following maintenance requirements, as set forth in proposed Rule 1009A, for the MSCI EAFE Index options: (1) the conditions set forth in subparagraphs (h)(i)(1), (2), (3), (4), (7), (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (h)(i)(5) and (6), must be satisfied only as of the first day of January and July in each year; and (2) the total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

The Exchange believes that the modified initial listing requirements are appropriate for trading options on the MSCI EAFE Index for various reasons. The Exchange believes that a P.M. settlement [13] is appropriate given the nature of this index, which encompasses multiple markets around the world.[14] Specifically, the MSCI EAFE Index components open with the start of trading in Asia at 6 p.m. E.T. (prior day) and closes with the end of trading in Europe at 12:30 p.m. E.T. (the next day) as closing prices from Ireland are accounted for in the closing calculation. The closing index level value is distributed by MSCI between 2:00 and 2:30 p.m. E.T. each trading day.[15] The index has a higher market capitalization requirement than other broad based indexes. The MSCI EAFE Index currently contains more than 900 components and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. Therefore, because the MSCI EAFE Index has a large number of component securities, representative of many countries, and trades a large volume with respect to ETFs today,[16] the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad based indexes, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

Exchange Rules that apply to the trading of options on broad-based indexes also would apply to options on the Full Value MSCI EAFE Index.[17] The trading of these options also would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures for index options.[18] The Exchange would apply the same position limits as exist today for broad-based index options, namely 25,000 contracts on the same side of the market for the MSCI EAFE Index option.[19] All position limit hedge exemptions will apply. The Exchange proposes to apply existing index option margin requirements for the purchase and sale of options on the MSCI EAFE Index.[20] In addition, the Exchange proposes to amend Rule 1079(d)(1) to also note that with respect to FLEX options on the MSCI EAFE index, the same number of contracts, 25,000, would apply with respect to the position limit.

The Exchange proposes to set strike price intervals for these options at $2.50 when the strike price of Full Value MSCI EAFE Index option is below $200, and at least $5.00 strike price intervals otherwise. The minimum tick size for series trading below $3 would be $0.05 and for series trading at or above $3 would be $0.10.[21]

Pursuant to Exchange Rule 1101A, the Exchange proposes to open at least one expiration month and one series for each class of index options open for trading on the Exchange.[22] The Exchange may open additional series of index options to maintain an orderly market, to meet customer demand or when the market price of the underlying index moves more than five strike prices from the initial exercise price or prices. New series of options may be added until the beginning of the month in which the options contract will expire. Additionally, due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on the index until five (5) business days prior to expiration. Also, the opening of a new series of options shall not affect the series of options of the same class previously opened.

Options on the MSCI EAFE Index would be subject to the same rules that

[11] *See* proposed Exchange Rule 1009A(h)(i)(2).

[12] *See* Exchange Rule 1000A(b)(11), which defines a broad-based index as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[13] The settlement value of a P.M. settled index option is based on closing prices of the component securities.

[14] The Exchange's Gold/Silver Sector[SM] Index (''XAU'') is a P.M. settled capitalization-weighted index.

[15] NYSE Liffe futures based on the MSCI EAFE Index utilize these P.M. closing prices.

[16] MSCI EAFE ETF is one of the top ten in the United States based on assets.

[17] *See generally* Exchange Rules 1000A through 1108A (Rules Applicable to Trading Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[18] *See* Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

[19] The exercise limits would also be 25,000 contracts as per Exchange Rule 1002A.

[20] *See* Exchange Rule 721.

[21] *See* Exchange Rule 1034 and proposed rule 1101A.

[22] *See* Exchange Rule 1101A.

presently govern all Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Exchange Rules are designed to protect public customer trading. Specifically, Rule 1024 prohibits members and member organizations from accepting a customer order to purchase or write an option unless such customer's account has been approved in writing by a designated Options Principal of the Member.[23] Additionally, Exchange Rule 1026, regarding suitability, is designed to ensure that options are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument.[24] Further, Exchange Rule 1027 permits members and employees of member organizations to exercise discretionary power with respect to trading options in a customer's account only if the member or employee of a member organization has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal.[25] Finally, Exchange Rule 1025, Supervision of Accounts, Rule 1028, Confirmations, and Rule 1029, Delivery of Options Disclosure Documents, will also apply to trading in options on the MSCI EAFE Index.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options on the MSCI EAFE Index and intends to apply those same procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the national securities exchanges. ISG members work together to coordinate surveillance and share information regarding the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. In addition, the Exchange is an affiliate member of the International Organization of Securities Commissions (''IOSCO''). IOSCO has members from over 100 different countries. Each of the countries from which there is a component security in the MSCI EAFE Index is a member of IOSCO. These members regulate more than 90 percent of the world's securities markets. Additionally, the Exchange has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges. Given the capitalization of this index and the deep and liquid markets for the securities underlying the MSCI EAFE Index, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. The MSCI EAFE ETF is one of the top ten in the United States based on assets and trades a large volume with respect to ETFs today.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Full Value MSCI EAFE Index, including LEAPS on the Full Value MSCI EAFE Index.

Finally, the Exchange proposes to add a new Rule 1109A entitled ''MSCI EAFE Index'' to provide additional detailed information pertaining to the index as required by the licensor, including but not limited to, liability and other representations on the part of MSCI Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[26] in general, and furthers the objectives of Section 6(b)(5) of the Act[27] in particular, in that it will permit trading in options on Full Value MSCI EAFE Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices to protect investor and the public interest, and to promote just and equitable principles of trade.

The Exchange believes that because the MSCI EAFE Index currently contains more than 900 components and no single component comprises more than 5% of the index, it is not easily subject to market manipulation. Given the capitalization of this index and the deep and liquid markets for the securities underlying the MSCI EAFE Index, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. The MSCI EAFE ETF trades a large volume with respect to ETFs today.[28] Therefore, because the MSCI EAFE Index has a large number of component securities, representative of many countries, and trades a large volume with respect to ETFs today, the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad based indexes, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

Exchange Rules that apply to the trading of options on broad-based indexes also would apply to options on the Full Value MSCI EAFE Index.[29] The trading of these options also would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures for index options.[30] The Exchange would apply the same position limits as exist today for broad-based index options, namely 25,000 contracts on the same side of the market for the MSCI EAFE Index option.[31] All position limit hedge exemptions will apply. The Exchange proposes to apply existing index option margin requirements for the purchase and sale of options on the MSCI EAFE Index.[32] In addition, the Exchange proposes to amend Rule 1079(d)(1) to also note that with respect to FLEX options on the MSCI EAFE index, the same number of contracts, 25,000, would apply with respect to the position limit.

The Exchange represents that it has an adequate surveillance program in place for options on the MSCI EAFE Index. The Exchange also represents that it has the necessary systems capacity to support the new options series. As stated in the filing, the Exchange has rules in place designed to protect public customer trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[23] *See* Exchange Rule 1024.

[24] *See* Exchange Rule 1026.

[25] *See* Exchange Rule 1027. Further, this Rule states that discretionary accounts shall receive frequent review by a Registered Options Principal qualified person specifically delegated such responsibilities under Rule 1025, who is not exercising the discretionary authority.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] The MSCI EAFE ETF is one of the top ten in the United States based on assets.

[29] *See generally* Exchange Rules 1000A through 1108A (Rules Applicable to Trading Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[30] *See* Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

[31] The exercise limits would also be 25,000 contracts as per Exchange Rule 1002A.

[32] *See* Exchange Rule 721.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx-2012–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–28 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6317 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66567; File No. SR–EDGA–2012–08]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, SIX Swiss Exchange AG, Will Transfer Its Indirect Ownership Interest in ISE Holdings, Inc. to a Newly Formed Swiss Corporation, Eurex Global Derivatives AG

March 9, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2012, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the U.S. Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) make changes to its corporate structure in connection with the transfer of SIX Swiss Exchange AG's (''SIX'') 50% indirect ownership interest of International Securities Exchange Holdings, Inc. (''ISE Holdings'') to a newly formed Swiss corporation, Eurex Global Derivatives AG (''EGD''), which will become a wholly-owned subsidiary of Deutsche Börse AG (''Deutsche Börse''), effectively granting Deutsche Börse a 100% indirect ownership interest in ISE Holdings and, in turn, International Securities Exchange, LLC (''ISE'') (the ''Transaction''), (ii) amend and restate the Amended and Restated Trust Agreement (''Trust''), (iii) file the form of EGD Corporate Resolution (''Resolution''), (iv) file the form of Agreement and Consent by and between EGD and Eurex Zürich AG (''Eurex Zürich'') (''Agreement and Consent'') and (v) amend and restate the Amended and Restated Bylaws of ISE Holdings (''Bylaws''). The text of the proposed rule change is available on the Exchange's Web site *www.directedge.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) make changes to its corporate structure in connection with the Transaction, (ii) amend and restate the Trust, (iii) file the form of Resolution, (iv) file the form of Agreement and Consent, and (v) amend and restate the Bylaws.

Background

On December 17, 2007, ISE Holdings, the direct parent of ISE, became a direct wholly-owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which, in turn, is a wholly-owned subsidiary of Eurex Frankfurt AG (''Eurex Frankfurt'').[3] Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich, which, in turn, is jointly owned by Deutsche Börse

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 56955 (December 13, 2007); 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

and SIX. SIX is owned by SIX Group AG (''SIX Group'').

On December 23, 2008, ISE merged the ISE Stock Exchange, LLC, with and into Maple Merger Sub, LLC, a wholly-owned subsidiary of Direct Edge Holdings LLC (''Direct Edge'').[4] As part of the same transaction, ISE Holdings purchased a 31.54% equity interest in Direct Edge.

On May 7, 2009, Direct Edge's direct subsidiaries, the Exchange and EDGX Exchange, Inc. (''EDGX''), each filed a Form 1 Application with the Commission, to own and operate a registered national securities exchange.[5] On March 12, 2010, the Commission granted the Form 1 exchange registration applications of the Exchange and EDGX.[6] ISE and EDGX will be separately filing a proposed rule change in connection with the Transaction that will be substantially the same as the Exchange's proposed rule change.

On June 7, 2011, Deutsche Börse, SIX Group, and SIX signed a definitive agreement for the Transaction, which would give Deutsche Börse a 100% indirect ownership interest in the currently jointly-owned Eurex Zürich. Deutsche Börse currently has a 50% direct ownership interest in Eurex Zürich, and, after the Transaction closes, Deutsche Börse will have a 100% direct ownership interest in EGD, which will have a 50% direct ownership interest in Eurex Zürich.[7] Accordingly, SIX and SIX Group will no longer have an indirect ownership interest in the Exchange, ISE, or EDGX. Therefore, the Exchange is proposing to take the following actions with respect to the Trust, the Resolution, the Bylaws, all of which were previously approved by the Commission, and the Agreement and Consent, to reflect the ownership changes proposed by the Transaction.

EGD acknowledges that, to the extent it becomes aware of possible violations of the rules of the Exchange or the Securities Exchange Act of 1934 (''Exchange Act''), it will be responsible for referring such possible violations to the Exchange. In addition, EGD will become a party to an agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, SIX Group, U.S. Exchange Holdings, ISE Holdings, and the Exchange to provide for adequate funding for the Exchange's regulatory responsibilities, and, following consummation of the Transaction, SIX and SIX Group will no longer be parties to such agreement.

Trust

The Exchange proposes to amend certain provisions of the Trust in connection with the Transaction. The Trust serves four general purposes: (i) To accept, hold and dispose of Trust Shares[8] on the terms and subject to the conditions set forth therein, (ii) to determine whether a Material Compliance Event[9] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;[10] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary[11] as provided in Section 4.2(h) therein.

Accordingly, the Exchange proposes to update the recitals of the Trust, remove references to SIX and SIX Group from the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, add a reference to EGD in the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, remove SIX's address from the notice provisions in Section 8.8 of the Trust, and add EGD's address to the notice provisions in Section 8.8 of the Trust. The Exchange also proposes to correct several typographical errors in the Trust.

Resolution

Each of Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, and SIX Group (the ''non-U.S. Upstream Owners'') have taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange, ISE, and EDGX. Specifically, each of the non-U.S. Upstream Owners have adopted resolutions, which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable). Accordingly, EGD as a 50% owner of Eurex Zürich, and thus a ''non-U.S. Upstream Owner,'' will adopt the Resolution to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to its control of the Exchange, ISE, and EDGX, with respect to itself, as well as to its board members, officers, employees, and agents (as applicable).[12]

The Resolution would provide that EGD shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange, ISE, and EDGX. In addition, the Resolution would provide that the board members, including each person who becomes a board member, would so consent to comply and cooperate and EGD would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate.

The Resolution would also provide that, where necessitated by Swiss law, EGD will provide information related to the activities of the Exchange, ISE, or EDGX, including books and records of EGD related to the activities of the Exchange, ISE, or EDGX, to the Commission promptly, through Eurex Zürich, which will, in turn, provide such information to the Swiss Financial Market Supervisory Authority FINMA (''FINMA''), which will provide such information to the Commission.[13]

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[4] *See* Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85).

[5] *See* Securities and Exchange Act Release No. 60651 (September 11, 2009); 74 FR 47827 (September 17, 2009) (File Nos. 10–193 and 10–194).

[6] *See* Securities and Exchange Act Release No. 61698 (March 12, 2010); 75 FR 13151 (March 18, 2010) (approving File Nos. 10–194 and 10–196).

[7] ISE Holdings will continue to be the sole member of ISE.

[8] Under the Trust, the term ''Trust Shares'' means either Excess Shares or Deposited Shares, or both, as the case may be. The term ''Excess Shares'' means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the Amended and Restated Certificate of Incorporation of ISE Holdings (the ''Certificate''), through, for example, ownership of one of the non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term ''Deposited Shares'' means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[9] Under the Trust, the term ''Material Compliance Event'' means, with respect to a non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions in any material respect.

[10] Under the Trust, the term ''Call Option'' means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[11] Under the Trust, the term ''Trust Beneficiary'' means U.S. Exchange Holdings.

[12] The form of Resolution is substantially similar to the resolutions previously adopted by each of the non-U.S. Upstream Owners. The form of Resolution differs from the resolutions previously adopted by each of the non-U.S. Upstream Owners in that the Resolution would explicitly reference the Exchange and EDGX, and the FINMA procedure would allow EGD to provide information relating to the activities of the Exchange, ISE, or EDGX to the Commission through Eurex Zürich, which will provide such information to FINMA, whereas the resolutions previously adopted by each of the non-U.S. Upstream Owners incorporated the Exchange and EDGX by reference, and the FINMA procedure allows SIX, SIX Group, and Eurex Zürich to provide information relating to the activities of the Exchange, ISE, and EDGX to the Commission directly through FINMA. *See supra* note 4.

[13] Due to EGD's status as an unregulated Swiss corporation, FINMA cannot directly compel EGD to produce such information. As such, it is necessary to include Eurex Zürich (which is regulated by FINMA) as an additional conduit in the FINMA procedure.

Moreover, oral exchanges between EGD and the Commission related to the activities of the Exchange, ISE, or EDGX will include, at all times, the participation of Eurex Zürich and FINMA, through its oversight of Eurex Zürich as a regulated legal entity, where necessitated by Swiss law. These procedures collectively are referred to as the ''FINMA procedure.'' The Exchange notes that the transmission of information between EGD and Eurex Zürich is dealt with in the Agreement and Consent.

Swiss law designed to protect Swiss sovereignty raises concerns about the ability of EGD to provide the Commission with direct access to information, including books and records, related to the activities of the Exchange, ISE, or EDGX.[14] In order not to run afoul of Swiss law, the Commission and FINMA have developed the FINMA procedure under which FINMA undertakes to serve as a conduit for unfiltered delivery of books and records of EGD related to the activities of the Exchange, ISE, or EDGX.[15]

Notwithstanding the FINMA procedure, EGD would remain fully responsible for meeting all of its obligations as an owner of the Exchange, ISE, or EDGX. The Exchange notes that if EGD does not comply with the FINMA procedure, such noncompliance may trigger a Material Compliance Event and the exercise of the Call Option under the Trust.[16]

The Resolution will provide that, to the extent that EGD is involved in the activities of the Exchange, ISE, or EDGX, it will be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the Exchange, ISE, or EDGX (and will be deemed to agree that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to ISE; and (ii) Direct Edge may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to the Exchange or EDGX), and will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

In addition, the Resolution will provide that for so long as EGD directly or indirectly controls the Exchange, ISE, or EDGX: (a) The books, records, officers, directors (or equivalent) and employees of EGD will be deemed to be the books, records, officers, directors and employees of the Exchange, ISE, or EDGX for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of the Exchange, ISE, or EDGX; and (b) EGD's books and records related to the activities of the Exchange, ISE, or EDGX will at all times be made available for inspection and copying by the Commission, the Exchange, ISE, or EDGX subject, where necessitated by Swiss law, to the FINMA procedure.

Additionally, the Resolution would provide that EGD shall, to the extent it is involved in the activities of the Exchange, ISE, or EDGX, give due regard to the preservation of the independence of the self-regulatory function of the Exchange, ISE, and EDGX and to their respective obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of the Exchange, ISE, or EDGX relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the Exchange, ISE, or EDGX to carry out their respective responsibilities under the Exchange Act. The Resolution also would provide that the EGD board members, including each person who becomes a board member, would consent to the requirements and that EGD would take reasonable steps to cause its officers and employees to agree to the requirements.

Furthermore, the Resolution would provide that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of EGD pertaining to the self-regulatory function of the Exchange, ISE, or EDGX contained in the books and records of the Exchange, ISE, or EDGX shall: (a) Not be made available to any persons other than to those officers, directors (or equivalent), employees and agents of EGD that have a reasonable need to know the contents thereof; (b) be retained in confidence by EGD and the officers, directors (or equivalent), employees, and agents of EGD; and (c) not be used for any commercial purposes. In addition, the Resolution would provide that the terms regarding such confidential information shall not be interpreted so as to limit or impede: (i) The rights of the Commission, the Exchange, ISE, or EDGX to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees, or agents of EGD to disclose such confidential information to the Commission, the Exchange, ISE, or EDGX subject, where necessitated by Swiss law, to the FINMA procedure. The Resolution would also provide that the EGD board members, including each person who becomes a board member, would consent to these requirements regarding confidential information and that EGD would take reasonable steps to cause its officers, employees, and agents to agree to the requirements.

The Resolution would provide that the board members of EGD would, in discharging his or her responsibilities, to the extent such board member is involved in the activities of the Exchange, ISE, or EDGX and to the fullest extent permitted by applicable law, take into consideration the effect that EGD's actions would have on the ability of: (a) The Exchange, ISE, and EDGX to carry out their respective responsibilities under the Exchange Act; and (b) the Exchange, ISE, EDGX, and EGD: (i) To engage in conduct that fosters and does not interfere with the ability of the Exchange, ISE, EDGX, or EGD to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.

Finally, the Resolution will provide that EGD will provide notification of certain ownership levels and that EGD will take reasonable steps to cause ISE

[14] *See* Art. 271 of Swiss Criminal Code.

[15] Application of the FINMA procedure would be limited to issues arising in the context of the Transaction and the Commission's oversight of the Exchange, ISE, and EDGX. Information-sharing and cooperation between the Commission and FINMA in securities enforcement matters will continue to be governed by the letters of cooperation between the Commission and FINMA.

[16] *See supra* notes 7 and 8.

Holdings and Direct Edge to be in compliance with their respective ownership limits and voting limits. The Resolution would provide that before any amendment to or repeal of any provision of the Resolution, the Agreement and Consent, or any action by EGD that would have the effect of amending or repealing any provision of the Resolution or the Agreement and Consent becomes effective, it must be submitted to the board of directors of the Exchange, ISE, and EDGX, and, if it must be filed with, or filed with and approved by, the Commission before it may become effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then it will not become effective until filed with, or filed with and approved by, the Commission, as the case may be.

Agreement and Consent

EGD will also sign an Agreement and Consent with Eurex Zürich establishing the FINMA procedure, which will ensure that EGD will (1) cooperate with the Commission, the Exchange, ISE, and EDGX; (2) comply with U.S. federal securities laws; (3) comply with the inspection and copying of EGD's books and records; (4) agree that EGD's books, records, officers, directors and employees be deemed to be those of the Exchange, ISE, or EDGX; (5) maintain confidentiality of information pertaining to the self-regulatory function of the Exchange, ISE, or EDGX; (6) preserve the independence of the self-regulatory function of the Exchange, ISE, and EDGX; (7) take reasonable steps to cause EGD's officers, directors and employees to consent to the applicability to him or her of the Resolution; and (8) take reasonable steps to cause EGD's agents to cooperate with the Commission, the Exchange, ISE, or EDGX. The form of the Agreement and Consent is attached hereto as Exhibit 5C.

Finally, the Agreement and Consent would provide that before any amendment to or repeal of any provision of the Agreement and Consent or any action by EGD that would have the effect of amending or repealing any provision of the Agreement and Consent becomes effective, it must be submitted to the board of directors of the Exchange, ISE, and EDGX, and, if it must be filed with, or filed with and approved by, the Commission before it may become effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then it will not become effective until filed with, or filed with and approved by, the Commission, as the case may be.

Bylaws [17]

The Certificate currently restricts any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings and from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any ISE member [sic], acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[18] If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to the Trust. The Certificate and the Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the Bylaws if it makes certain findings and the amendment to the Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act.[19]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the Bylaws set forth in Exhibit 5D (the ''Bylaws Amendment'') in order to permit EGD to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after consummation of the Transaction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the proposed rule change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Transaction. In addition, the Transaction will not impair the ability of ISE Holdings, the Exchange, ISE, EDGX, or any facility thereof, to carry out their respective functions and responsibilities under the Exchange Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Exchange Act. The Exchange will operate in the same manner following the Transaction as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The ISE Holdings board of directors also determined that ownership of ISE Holdings by EGD is in the best interests of ISE Holdings, its shareholders, the Exchange, ISE, and EDGX. In addition, neither EGD, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.'' The Exchange is requesting approval by the Commission of the Bylaws Amendment in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) [20] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1) [21] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Moreover, the Transaction will not impair the ability of the Commission to enforce the Exchange Act. The Exchange will operate in the same manner following the Transaction as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The proposed rule change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the Exchange, its direct and indirect parents, and EGD, including its directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) [22] of the Exchange Act because the proposed rule change summarized herein would be consistent with and

[17] On January 17, 2012, the Commission approved a proposed rule change by the Exchange relating to a corporate transaction in which Deutsche Börse and NYSE Euronext would become subsidiaries of Alpha Beta Netherlands Holding N.V. (the ''Combination''). *See* Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (SR–EDGA–2011–34). As part of that proposed rule change, the Exchange submitted proposed amendments to the Bylaws. The Commission's approval was conditioned on the Combination being consummated. The Combination was not consummated and, therefore, the proposed rule change, including the proposed amendments to the Bylaws, did not become effective.

[18] *See* Certificate, Article FOURTH, Section III.

[19] 15 U.S.C. 78s(b).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(1).

[22] 15 U.S.C. 78f(b)(5).

facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Exchange Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors. In addition, the Exchange believes the proposed rule change will preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange will be able to obtain any information it needs in order to detect and deter any fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Exchange Act.

Finally, the Exchange is not proposing any changes to the Exchange's operational or trading structure in connection with the Transaction. Instead, the Exchange represents that the proposed rule change consists of administrative amendments to ISE Holding's corporate documents and the Resolution and the Agreement and Consent relating to EGD. The Trust, the Resolution, and the Bylaws are similar to corporate documents that were previously approved by the Commission.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[23] *See supra* notes 1 and 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–08 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6258 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66566; File No. SR–ISE–2012–21]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, SIX Swiss Exchange AG, Will Transfer Its Indirect Ownership Interest in ISE Holdings, Inc. to a Newly Formed Swiss Corporation, Eurex Global Derivatives AG

March 9, 2012.

Pursuant to Section 19(b)(1)[1] of the U.S. Securities Exchange Act of 1934, as amended (''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2012, International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the U.S. Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) make changes to its corporate structure in connection with the transfer of SIX Swiss Exchange AG's (''SIX'') 50% indirect ownership interest of International Securities Exchange Holdings, Inc. (''ISE Holdings'') to a

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

newly formed Swiss corporation, Eurex Global Derivatives AG (''EGD''), which will become a wholly-owned subsidiary of Deutsche Börse AG (''Deutsche Börse''), effectively granting Deutsche Börse a 100% indirect ownership interest in ISE Holdings and, in turn, the Exchange (the ''Transaction''), (ii) amend and restate the Amended and Restated Trust Agreement (''Trust''), (iii) file the form of EGD Corporate Resolution (''Resolution''), (iv) file the form of Agreement and Consent by and between EGD and Eurex Zürich AG (''Eurex Zürich'') (''Agreement and Consent''), and (v) amend and restate the Amended and Restated Bylaws of ISE Holdings (''Bylaws''). The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) make changes to its corporate structure in connection with the Transaction, (ii) amend and restate the Trust, (iii) file the form of Resolution, (iv) file the form of Agreement and Consent, and (v) amend and restate the Bylaws.

Background

On December 17, 2007, ISE Holdings, the direct parent of the Exchange, became a direct wholly-owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which, in turn, is a wholly-owned subsidiary of Eurex Frankfurt AG (''Eurex Frankfurt'').[3] Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich, which, in turn, is jointly owned by Deutsche Börse and SIX. SIX is owned by SIX Group AG (''SIX Group'').

On December 23, 2008, the Exchange merged the ISE Stock Exchange, LLC, with and into Maple Merger Sub, LLC, a wholly-owned subsidiary of Direct Edge Holdings LLC (''Direct Edge'').[4] As part of the same transaction, ISE Holdings purchased a 31.54% equity interest in Direct Edge.

On May 7, 2009, Direct Edge's direct subsidiaries, EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX''), each filed a Form 1 Application with the Commission, to own and operate a registered national securities exchange.[5] On March 12, 2010, the Commission granted the Form 1 exchange registration applications of EDGA and EDGX.[6] EDGA and EDGX will be separately filing a proposed rule change in connection with the Transaction that will be substantially the same as the Exchange's proposed rule change.

On June 7, 2011, Deutsche Börse, SIX Group, and SIX signed a definitive agreement for the Transaction, which would give Deutsche Börse a 100% indirect ownership interest in the currently jointly-owned Eurex Zürich. Deutsche Börse currently has a 50% direct ownership interest in Eurex Zürich, and, after the Transaction closes, Deutsche Börse will have a 100% direct ownership interest in EGD, which will have a 50% direct ownership interest in Eurex Zürich.[7] Accordingly, SIX and SIX Group will no longer have an indirect ownership interest in the Exchange, EDGA, or EDGX. Therefore, the Exchange is proposing to take the following actions with respect to the Trust, the Resolution, the Bylaws, all of which were previously approved by the Commission, and the Agreement and Consent, to reflect the ownership changes proposed by the Transaction.

EGD acknowledges that, to the extent it becomes aware of possible violations of the rules of the Exchange or the Securities Exchange Act of 1934 (''Exchange Act''), it will be responsible for referring such possible violations to the Exchange. In addition, EGD will become a party to an agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, SIX Group, U.S. Exchange Holdings, ISE Holdings, and the Exchange to provide for adequate funding for the Exchange's regulatory responsibilities, and, following consummation of the Transaction, SIX and SIX Group will no longer be parties to such agreement.

Trust

The Exchange proposes to amend certain provisions of the Trust in connection with the Transaction. The Trust serves four general purposes: (i) to accept, hold and dispose of Trust Shares[8] on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event[9] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;[10] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary[11] as provided in Section 4.2(h) therein.

Accordingly, the Exchange proposes to update the recitals of the Trust, remove references to SIX and SIX Group from the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, add a reference to EGD in the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, remove SIX's address from the notice provisions in Section 8.8 of the Trust, and add EGD's address to the notice provisions in Section 8.8 of the Trust. The Exchange also proposes to correct several typographical errors in the Trust.

Resolution

Each of Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, and SIX Group (the ''non-U.S. Upstream Owners'') have taken appropriate steps

[3] *See* Securities and Exchange Act Release No. 56955 (December 13, 2007); 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

[4] *See* Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85).

[5] *See* Securities and Exchange Act Release No. 60651 (September 11, 2009); 74 FR 47827 (September 17, 2009) (File Nos. 10–193 and 10–194).

[6] *See* Securities and Exchange Act Release No. 61698 (March 12, 2010); 75 FR 13151 (March 18, 2010) (approving File Nos. 10–194 and 10–196).

[7] ISE Holdings will continue to be the sole member of the Exchange.

[8] Under the Trust, the term ''Trust Shares'' means either Excess Shares or Deposited Shares, or both, as the case may be. The term ''Excess Shares'' means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the Amended and Restated Certificate of Incorporation of ISE Holdings (the ''Certificate''), through, for example, ownership of one of the non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term ''Deposited Shares'' means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[9] Under the Trust, the term ''Material Compliance Event'' means, with respect to a non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions in any material respect.

[10] Under the Trust, the term ''Call Option'' means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[11] Under the Trust, the term ''Trust Beneficiary'' means U.S. Exchange Holdings.

to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange, EDGA, and EDGX. Specifically, each of the non-U.S. Upstream Owners have adopted resolutions, which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable). Accordingly, EGD as a 50% owner of Eurex Zürich, and thus a ''non-U.S. Upstream Owner,'' will adopt the Resolution to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to its control of the Exchange, EDGA, and EDGX, with respect to itself, as well as to its board members, officers, employees, and agents (as applicable).[12]

The Resolution would provide that EGD shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange, EDGA, and EDGX. In addition, the Resolution would provide that the board members, including each person who becomes a board member, would so consent to comply and cooperate and EGD would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate.

The Resolution would also provide that, where necessitated by Swiss law, EGD will provide information related to the activities of the Exchange, EDGA, or EDGX, including books and records of EGD related to the activities of the Exchange, EDGA, or EDGX, to the Commission promptly, through Eurex Zürich, which will, in turn, provide such information to the Swiss Financial Market Supervisory Authority FINMA (''FINMA''), which will provide such information to the Commission.[13]

Moreover, oral exchanges between EGD and the Commission related to the activities of the Exchange, EDGA, or EDGX will include, at all times, the participation of Eurex Zürich and FINMA, through its oversight of Eurex Zürich as a regulated legal entity, where necessitated by Swiss law. These procedures collectively are referred to as the ''FINMA procedure.'' The Exchange notes that the transmission of information between EGD and Eurex Zürich is dealt with in the Agreement and Consent.

Swiss law designed to protect Swiss sovereignty raises concerns about the ability of EGD to provide the Commission with direct access to information, including books and records, related to the activities of the Exchange, EDGA, or EDGX.[14] In order not to run afoul of Swiss law, the Commission and FINMA have developed the FINMA procedure under which FINMA undertakes to serve as a conduit for unfiltered delivery of books and records of EGD related to the activities of the Exchange, EDGA, or EDGX.[15]

Notwithstanding the FINMA procedure, EGD would remain fully responsible for meeting all of its obligations as an owner of the Exchange, EDGA, or EDGX. The Exchange notes that if EGD does not comply with the FINMA procedure, such noncompliance may trigger a Material Compliance Event and the exercise of the Call Option under the Trust.[16]

The Resolution will provide that, to the extent that EGD is involved in the activities of the Exchange, EDGA, or EDGX, it will be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the Exchange, EDGA, or EDGX (and will be deemed to agree that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to the Exchange; and (ii) Direct Edge may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to EDGA or EDGX), and will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

In addition, the Resolution will provide that for so long as EGD directly or indirectly controls the Exchange, EDGA, or EDGX: (a) The books, records, officers, directors (or equivalent) and employees of EGD will be deemed to be the books, records, officers, directors and employees of the Exchange, EDGA, or EDGX for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of the Exchange, EDGA, or EDGX; and (b) EGD's books and records related to the activities of the Exchange, EDGA, or EDGX will at all times be made available for inspection and copying by the Commission, the Exchange, EDGA, or EDGX subject, where necessitated by Swiss law, to the FINMA procedure.

Additionally, the Resolution would provide that EGD shall, to the extent it is involved in the activities of the Exchange, EDGA, or EDGX, give due regard to the preservation of the independence of the self-regulatory function of the Exchange, EDGA, and EDGX and to their respective obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of the Exchange, EDGA, or EDGX relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the Exchange, EDGA, or EDGX to carry out their respective responsibilities under the Exchange Act. The Resolution also would provide that the EGD board members, including each person who becomes a board member, would consent to the requirements and that EGD would take reasonable steps to cause its officers and employees to agree to the requirements.

Furthermore, the Resolution would provide that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of EGD pertaining to the self-regulatory function of the

[12] The form of Resolution is substantially similar to the resolutions previously adopted by each of the non-U.S. Upstream Owners. The form of Resolution differs from the resolutions previously adopted by each of the non-U.S. Upstream Owners in that the Resolution would explicitly reference EDGA and EDGX, and the FINMA procedure would allow EGD to provide information relating to the activities of the Exchange, EDGA, or EDGX to the Commission through Eurex Zürich, which will provide such information to FINMA, whereas the resolutions previously adopted by each of the non-U.S. Upstream Owners incorporated EDGA and EDGX by reference, and the FINMA procedure allows SIX, SIX Group, and Eurex Zürich to provide information relating to the activities of the Exchange, EDGA, and EDGX to the Commission directly through FINMA. *See supra* note 4.

[13] Due to EGD's status as an unregulated Swiss corporation, FINMA cannot directly compel EGD to produce such information. As such, it is necessary to include Eurex Zürich (which is regulated by FINMA) as an additional conduit in the FINMA procedure.

[14] *See* Art. 271 of Swiss Criminal Code.

[15] Application of the FINMA procedure would be limited to issues arising in the context of the Transaction and the Commission's oversight of the Exchange, EDGA, and EDGX. Information-sharing and cooperation between the Commission and FINMA in securities enforcement matters will continue to be governed by the letters of cooperation between the Commission and FINMA.

[16] *See supra* notes 7 and 8.

Exchange, EDGA, or EDGX contained in the books and records of the Exchange, EDGA, or EDGX shall: (a) Not be made available to any persons other than to those officers, directors (or equivalent), employees and agents of EGD that have a reasonable need to know the contents thereof; (b) be retained in confidence by EGD and the officers, directors (or equivalent), employees, and agents of EGD; and (c) not be used for any commercial purposes. In addition, the Resolution would provide that the terms regarding such confidential information shall not be interpreted so as to limit or impede: (i) the rights of the Commission, the Exchange, EDGA, or EDGX to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees, or agents of EGD to disclose such confidential information to the Commission, the Exchange, EDGA, or EDGX subject, where necessitated by Swiss law, to the FINMA procedure. The Resolution would also provide that the EGD board members, including each person who becomes a board member, would consent to these requirements regarding confidential information and that EGD would take reasonable steps to cause its officers, employees, and agents to agree to the requirements.

The Resolution would provide that the board members of EGD would, in discharging his or her responsibilities, to the extent such board member is involved in the activities of the Exchange, EDGA, or EDGX and to the fullest extent permitted by applicable law, take into consideration the effect that EGD's actions would have on the ability of: (a) The Exchange, EDGA, and EDGX to carry out their respective responsibilities under the Exchange Act; and (b) the Exchange, EDGA, EDGX, and EGD: (i) To engage in conduct that fosters and does not interfere with the ability of the Exchange, EDGA, EDGX, or EGD to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.

Finally, the Resolution will provide that EGD will provide notification of certain ownership levels and that EGD will take reasonable steps to cause ISE Holdings and Direct Edge to be in compliance with their respective ownership limits and voting limits. The Resolution would provide that before any amendment to or repeal of any provision of the Resolution, the Agreement and Consent, or any action by EGD that would have the effect of amending or repealing any provision of the Resolution or the Agreement and Consent becomes effective, it must be submitted to the board of directors of the Exchange, EDGA, and EDGX, and, if it must be filed with, or filed with and approved by, the Commission before it may become effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then it will not become effective until filed with, or filed with and approved by, the Commission, as the case may be.

Agreement and Consent

EGD will also sign an Agreement and Consent with Eurex Zürich establishing the FINMA procedure, which will ensure that EGD will (1) cooperate with the Commission, the Exchange, EDGA, and EDGX; (2) comply with U.S. federal securities laws; (3) comply with the inspection and copying of EGD's books and records; (4) agree that EGD's books, records, officers, directors and employees be deemed to be those of the Exchange, EDGA, or EDGX; (5) maintain confidentiality of information pertaining to the self-regulatory function of the Exchange, EDGA, or EDGX; (6) preserve the independence of the self-regulatory function of the Exchange, EDGA, and EDGX; (7) take reasonable steps to cause EGD's officers, directors and employees to consent to the applicability to him or her of the Resolution; and (8) take reasonable steps to cause EGD's agents to cooperate with the Commission, the Exchange, EDGA, or EDGX. The form of the Agreement and Consent is attached hereto as Exhibit 5C.

Finally, the Agreement and Consent would provide that before any amendment to or repeal of any provision of the Agreement and Consent or any action by EGD that would have the effect of amending or repealing any provision of the Agreement and Consent becomes effective, it must be submitted to the board of directors of the Exchange, EDGA, and EDGX, and, if it must be filed with, or filed with and approved by, the Commission before it may become effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then it will not become effective until filed with, or filed with and approved by, the Commission, as the case may be.

Bylaws [17]

The Certificate currently restricts any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings and from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[18] If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to the Trust. The Certificate and the Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the Bylaws if it makes certain findings and the amendment to the Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act.[19]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the Bylaws set forth in Exhibit 5D (the ''Bylaws Amendment'') in order to permit EGD to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after consummation of the Transaction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the proposed rule change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Transaction. In addition, the Transaction will not impair the ability of ISE Holdings, the Exchange, EDGA, EDGX, or any facility thereof, to carry out their respective functions and responsibilities under the

[17] On January 17, 2012, the Commission approved a proposed rule change by the Exchange relating to a corporate transaction in which Deutsche Börse and NYSE Euronext would become subsidiaries of Alpha Beta Netherlands Holding N.V. (the ''Combination''). *See* Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (SR–ISE–2011–69). As part of that proposed rule change, the Exchange submitted proposed amendments to the Bylaws. The Commission's approval was conditioned on the Combination being consummated. The Combination was not consummated and, therefore, the proposed rule change, including the proposed amendments to the Bylaws, did not become effective.

[18] *See* Certificate, Article FOURTH, Section III.

[19] 15 U.S.C. 78s(b).

Exchange Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Exchange Act. The Exchange will operate in the same manner following the Transaction as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The ISE Holdings board of directors also determined that ownership of ISE Holdings by EGD is in the best interests of ISE Holdings, its shareholders, the Exchange, EDGA, and EDGX. In addition, neither EGD, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.'' The Exchange is requesting approval by the Commission of the Bylaws Amendment in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[20] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)[21] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Moreover, the Transaction will not impair the ability of the Commission to enforce the Exchange Act. The Exchange will operate in the same manner following the Transaction as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The proposed rule change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the Exchange, its direct and indirect parents, and EGD, including its directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)[22] of the Exchange Act because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Exchange Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors. In addition, the Exchange believes the proposed rule change will preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange will be able to obtain any information it needs in order to detect and deter any fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Exchange Act.

Finally, the Exchange is not proposing any changes to the Exchange's operational or trading structure in connection with the Transaction. Instead, the Exchange represents that the proposed rule change consists of administrative amendments to ISE Holding's corporate documents and the Resolution and the Agreement and Consent relating to EGD. The Trust, the Resolution, and the Bylaws are similar to corporate documents that were previously approved by the Commission.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(1).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* notes 1 and 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–21 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6257 Filed 3–14–12; 8:45 a.m.]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66565; File No. SR–EDGX–2012–07]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, SIX Swiss Exchange AG, Will Transfer Its Indirect Ownership Interest in ISE Holdings, Inc. to a Newly Formed Swiss Corporation, Eurex Global Derivatives AG

March 9, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the U.S. Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) make changes to its corporate structure in connection with the transfer of SIX Swiss Exchange AG's (''SIX'') 50% indirect ownership interest of International Securities Exchange Holdings, Inc. (''ISE Holdings'') to a newly formed Swiss corporation, Eurex Global Derivatives AG (''EGD''), which will become a wholly-owned subsidiary of Deutsche Börse AG (''Deutsche Börse''), effectively granting Deutsche Börse a 100% indirect ownership interest in ISE Holdings and, in turn, International Securities Exchange, LLC (''ISE'') (the ''Transaction''), (ii) amend and restate the Amended and Restated Trust Agreement (''Trust''), (iii) file the form of EGD Corporate Resolution (''Resolution''), (iv) file the form of Agreement and Consent by and between EGD and Eurex Zürich AG (''Eurex Zürich'') (''Agreement and Consent'') and (v) amend and restate the Amended and Restated Bylaws of ISE Holdings (''Bylaws''). The text of the proposed rule change is available on the Exchange's Web site *www.directedge.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) make changes to its corporate structure in connection with the Transaction, (ii) amend and restate the Trust, (iii) file the form of Resolution, (iv) file the form of Agreement and Consent, and (v) amend and restate the Bylaws.

Background

On December 17, 2007, ISE Holdings, the direct parent of ISE, became a direct wholly-owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which, in turn, is a wholly-owned subsidiary of Eurex Frankfurt AG (''Eurex Frankfurt'').[3] Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich, which, in turn, is jointly owned by Deutsche Börse and SIX. SIX is owned by SIX Group AG (''SIX Group'').

On December 23, 2008, ISE merged the ISE Stock Exchange, LLC, with and into Maple Merger Sub, LLC, a wholly-owned subsidiary of Direct Edge Holdings LLC (''Direct Edge'').[4] As part of the same transaction, ISE Holdings purchased a 31.54% equity interest in Direct Edge.

On May 7, 2009, Direct Edge's direct subsidiaries, the Exchange and EDGA Exchange, Inc. (''EDGA''), each filed a Form 1 Application with the Commission, to own and operate a registered national securities exchange.[5] On March 12, 2010, the Commission granted the Form 1 exchange registration applications of the Exchange and EDGA.[6] ISE and EDGA will be separately filing a proposed rule change in connection with the Transaction that will be substantially the same as the Exchange's proposed rule change.

On June 7, 2011, Deutsche Börse, SIX Group, and SIX signed a definitive agreement for the Transaction, which would give Deutsche Börse a 100% indirect ownership interest in the currently jointly-owned Eurex Zürich. Deutsche Börse currently has a 50% direct ownership interest in Eurex Zürich, and, after the Transaction closes, Deutsche Börse will have a 100% direct ownership interest in EGD, which will have a 50% direct ownership interest in Eurex Zürich.[7] Accordingly, SIX and SIX Group will no longer have an indirect ownership interest in the Exchange, ISE, or EDGA. Therefore, the Exchange is proposing to take the following actions with respect to the Trust, the Resolution, the Bylaws, all of which were previously approved by the Commission, and the Agreement and Consent, to reflect the ownership changes proposed by the Transaction.

EGD acknowledges that, to the extent it becomes aware of possible violations of the rules of the Exchange or the Securities Exchange Act of 1934 (''Exchange Act''), it will be responsible for referring such possible violations to the Exchange. In addition, EGD will become a party to an agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, SIX Group, U.S. Exchange

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 56955 (December 13, 2007); 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

[4] *See* Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85).

[5] *See* Securities and Exchange Act Release No. 60651 (September 11, 2009); 74 FR 47827 (September 17, 2009) (File Nos. 10–193 and 10–194).

[6] *See* Securities and Exchange Act Release No. 61698 (March 12, 2010); 75 FR 13151 (March 18, 2010) (approving File Nos. 10–194 and 10–196).

[7] ISE Holdings will continue to be the sole member of ISE.

Holdings, ISE Holdings, and the Exchange to provide for adequate funding for the Exchange's regulatory responsibilities, and, following consummation of the Transaction, SIX and SIX Group will no longer be parties to such agreement.

Trust

The Exchange proposes to amend certain provisions of the Trust in connection with the Transaction. The Trust serves four general purposes: (i) To accept, hold and dispose of Trust Shares [8] on the terms and subject to the conditions set forth therein, (ii) to determine whether a Material Compliance Event [9] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option; [10] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary [11] as provided in Section 4.2(h) therein.

Accordingly, the Exchange proposes to update the recitals of the Trust, remove references to SIX and SIX Group from the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, add a reference to EGD in the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, remove SIX's address from the notice provisions in Section 8.8 of the Trust, and add EGD's address to the notice provisions in Section 8.8 of the Trust. The Exchange also proposes to correct several typographical errors in the Trust.

Resolution

Each of Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, and SIX Group (the ''non-U.S. Upstream Owners'') have taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange, ISE, and EDGA. Specifically, each of the non-U.S. Upstream Owners have adopted resolutions, which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable). Accordingly, EGD as a 50% owner of Eurex Zürich, and thus a ''non-U.S. Upstream Owner,'' will adopt the Resolution to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to its control of the Exchange, ISE, and EDGA, with respect to itself, as well as to its board members, officers, employees, and agents (as applicable).[12]

The Resolution would provide that EGD shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange, ISE, and EDGA. In addition, the Resolution would provide that the board members, including each person who becomes a board member, would so consent to comply and cooperate and EGD would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate.

The Resolution would also provide that, where necessitated by Swiss law, EGD will provide information related to the activities of the Exchange, ISE, or EDGA, including books and records of EGD related to the activities of the Exchange, ISE, or EDGA, to the Commission promptly, through Eurex Zürich, which will, in turn, provide such information to the Swiss Financial Market Supervisory Authority FINMA (''FINMA''), which will provide such information to the Commission.[13]

Moreover, oral exchanges between EGD and the Commission related to the activities of the Exchange, ISE, or EDGA will include, at all times, the participation of Eurex Zürich and FINMA, through its oversight of Eurex Zürich as a regulated legal entity, where necessitated by Swiss law. These procedures collectively are referred to as the ''FINMA procedure.'' The Exchange notes that the transmission of information between EGD and Eurex Zürich is dealt with in the Agreement and Consent.

Swiss law designed to protect Swiss sovereignty raises concerns about the ability of EGD to provide the Commission with direct access to information, including books and records, related to the activities of the Exchange, ISE, or EDGA.[14] In order not to run afoul of Swiss law, the Commission and FINMA have developed the FINMA procedure under which FINMA undertakes to serve as a conduit for unfiltered delivery of books and records of EGD related to the activities of the Exchange, ISE, or EDGA.[15]

Notwithstanding the FINMA procedure, EGD would remain fully responsible for meeting all of its obligations as an owner of the Exchange, ISE, or EDGA. The Exchange notes that if EGD does not comply with the FINMA procedure, such noncompliance may trigger a Material Compliance Event and the exercise of the Call Option under the Trust.[16]

The Resolution will provide that, to the extent that EGD is involved in the activities of the Exchange, ISE, or EDGA, it will be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the Exchange, ISE, or EDGA (and will be deemed to agree that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to ISE; and (ii) Direct Edge may serve as the U.S. agent for purposes of service of process in such suit, action or

[8] Under the Trust, the term ''Trust Shares'' means either Excess Shares or Deposited Shares, or both, as the case may be. The term ''Excess Shares'' means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the Amended and Restated Certificate of Incorporation of ISE Holdings (the ''Certificate''), through, for example, ownership of one of the non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term ''Deposited Shares'' means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[9] Under the Trust, the term ''Material Compliance Event'' means, with respect to a non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions in any material respect.

[10] Under the Trust, the term ''Call Option'' means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[11] Under the Trust, the term ''Trust Beneficiary'' means U.S. Exchange Holdings.

[12] The form of Resolution is substantially similar to the resolutions previously adopted by each of the non-U.S. Upstream Owners. The form of Resolution differs from the resolutions previously adopted by each of the non-U.S. Upstream Owners in that the Resolution would explicitly reference the Exchange and EDGA, and the FINMA procedure would allow EGD to provide information relating to the activities of the Exchange, ISE, or EDGA to the Commission through Eurex Zürich, which will provide such information to FINMA, whereas the resolutions previously adopted by each of the non-U.S. Upstream Owners incorporated the Exchange and EDGA by reference, and the FINMA procedure allows SIX, SIX Group, and Eurex Zürich to provide information relating to the activities of the Exchange, ISE, and EDGA to the Commission directly through FINMA. *See supra* note 4.

[13] Due to EGD's status as an unregulated Swiss corporation, FINMA cannot directly compel EGD to produce such information. As such, it is necessary to include Eurex Zürich (which is regulated by FINMA) as an additional conduit in the FINMA procedure.

[14] *See* Art. 271 of Swiss Criminal Code.

[15] Application of the FINMA procedure would be limited to issues arising in the context of the Transaction and the Commission's oversight of the Exchange, ISE, and EDGA. Information-sharing and cooperation between the Commission and FINMA in securities enforcement matters will continue to be governed by the letters of cooperation between the Commission and FINMA.

[16] *See supra* notes 7 and 8.

proceeding with respect to the Exchange or EDGA), and will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

In addition, the Resolution will provide that for so long as EGD directly or indirectly controls the Exchange, ISE, or EDGA: (a) The books, records, officers, directors (or equivalent) and employees of EGD will be deemed to be the books, records, officers, directors and employees of the Exchange, ISE, or EDGA for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of the Exchange, ISE, or EDGA; and (b) EGD's books and records related to the activities of the Exchange, ISE, or EDGA will at all times be made available for inspection and copying by the Commission, the Exchange, ISE, or EDGA subject, where necessitated by Swiss law, to the FINMA procedure.

Additionally, the Resolution would provide that EGD shall, to the extent it is involved in the activities of the Exchange, ISE, or EDGA, give due regard to the preservation of the independence of the self-regulatory function of the Exchange, ISE, and EDGA and to their respective obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of the Exchange, ISE, or EDGA relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the Exchange, ISE, or EDGA to carry out their respective responsibilities under the Exchange Act. The Resolution also would provide that the EGD board members, including each person who becomes a board member, would consent to the requirements and that EGD would take reasonable steps to cause its officers and employees to agree to the requirements.

Furthermore, the Resolution would provide that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of EGD pertaining to the self-regulatory function of the Exchange, ISE, or EDGA contained in the books and records of the Exchange, ISE, or EDGA shall: (a) Not be made available to any persons other than to those officers, directors (or equivalent), employees and agents of EGD that have a reasonable need to know the contents thereof; (b) be retained in confidence by EGD and the officers, directors (or equivalent), employees, and agents of EGD; and (c) not be used for any commercial purposes. In addition, the Resolution would provide that the terms regarding such confidential information shall not be interpreted so as to limit or impede: (i) The rights of the Commission, the Exchange, ISE, or EDGA to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees, or agents of EGD to disclose such confidential information to the Commission, the Exchange, ISE, or EDGA subject, where necessitated by Swiss law, to the FINMA procedure. The Resolution would also provide that the EGD board members, including each person who becomes a board member, would consent to these requirements regarding confidential information and that EGD would take reasonable steps to cause its officers, employees, and agents to agree to the requirements.

The Resolution would provide that the board members of EGD would, in discharging his or her responsibilities, to the extent such board member is involved in the activities of the Exchange, ISE, or EDGA and to the fullest extent permitted by applicable law, take into consideration the effect that EGD's actions would have on the ability of: (a) The Exchange, ISE, and EDGA to carry out their respective responsibilities under the Exchange Act; and (b) the Exchange, ISE, EDGA, and EGD: (i) To engage in conduct that fosters and does not interfere with the ability of the Exchange, ISE, EDGA, or EGD to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.

Finally, the Resolution will provide that EGD will provide notification of certain ownership levels and that EGD will take reasonable steps to cause ISE Holdings and Direct Edge to be in compliance with their respective ownership limits and voting limits. The Resolution would provide that before any amendment to or repeal of any provision of the Resolution, the Agreement and Consent, or any action by EGD that would have the effect of amending or repealing any provision of the Resolution or the Agreement and Consent becomes effective, it must be submitted to the board of directors of the Exchange, ISE, and EDGA, and, if it must be filed with, or filed with and approved by, the Commission before it may become effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then it will not become effective until filed with, or filed with and approved by, the Commission, as the case may be.

Agreement and Consent

EGD will also sign an Agreement and Consent with Eurex Zürich establishing the FINMA procedure, which will ensure that EGD will (1) cooperate with the Commission, the Exchange, ISE, and EDGA; (2) comply with U.S. federal securities laws; (3) comply with the inspection and copying of EGD's books and records; (4) agree that EGD's books, records, officers, directors and employees be deemed to be those of the Exchange, ISE, or EDGA; (5) maintain confidentiality of information pertaining to the self-regulatory function of the Exchange, ISE, or EDGA; (6) preserve the independence of the self-regulatory function of the Exchange, ISE, and EDGA; (7) take reasonable steps to cause EGD's officers, directors and employees to consent to the applicability to him or her of the Resolution; and (8) take reasonable steps to cause EGD's agents to cooperate with the Commission, the Exchange, ISE, or EDGA. The form of the Agreement and Consent is attached hereto as Exhibit 5C.

Finally, the Agreement and Consent would provide that before any amendment to or repeal of any provision of the Agreement and Consent or any action by EGD that would have the effect of amending or repealing any provision of the Agreement and Consent becomes effective, it must be submitted to the board of directors of the Exchange, ISE, and EDGA, and, if it must be filed with, or filed with and approved by, the Commission before it may become effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then it will not become effective until filed with, or filed with and approved by, the Commission, as the case may be.

Bylaws [17]

The Certificate currently restricts any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings and from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any ISE member [sic], acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[18] If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to the Trust. The Certificate and the Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the Bylaws if it makes certain findings and the amendment to the Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act.[19]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the Bylaws set forth in Exhibit 5D (the ''Bylaws Amendment'') in order to permit EGD to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after consummation of the Transaction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the proposed rule change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Transaction. In addition, the Transaction will not impair the ability of ISE Holdings, the Exchange, ISE, EDGA, or any facility thereof, to carry out their respective functions and responsibilities under the Exchange Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Exchange Act. The Exchange will operate in the same manner following the Transaction as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The ISE Holdings board of directors also determined that ownership of ISE Holdings by EGD is in the best interests of ISE Holdings, its shareholders, the Exchange, ISE, and EDGA. In addition, neither EGD, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.'' The Exchange is requesting approval by the Commission of the Bylaws Amendment in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) [20] of the Exchange Act in general, and furthers the objectives of Section 6(b)(1) [21] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Moreover, the Transaction will not impair the ability of the Commission to enforce the Exchange Act. The Exchange will operate in the same manner following the Transaction as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The proposed rule change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the Exchange, its direct and indirect parents, and EGD, including its directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) [22] of the Exchange Act because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Exchange Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors. In addition, the Exchange believes the proposed rule change will preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange will be able to obtain any information it needs in order to detect and deter any fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Exchange Act.

Finally, the Exchange is not proposing any changes to the Exchange's operational or trading structure in connection with the Transaction. Instead, the Exchange represents that the proposed rule change consists of administrative amendments to ISE Holding's corporate documents and the Resolution and the Agreement and Consent relating to EGD. The Trust, the Resolution, and the Bylaws are similar to corporate documents that were previously approved by the Commission.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[17] On January 17, 2012, the Commission approved a proposed rule change by the Exchange relating to a corporate transaction in which Deutsche Börse and NYSE Euronext would become subsidiaries of Alpha Beta Netherlands Holding N.V. (the ''Combination''). *See* Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (SR–EDGX–2011–33). As part of that proposed rule change, the Exchange submitted proposed amendments to the Bylaws. The Commission's approval was conditioned on the Combination being consummated. The Combination was not consummated and, therefore, the proposed rule change, including the proposed amendments to the Bylaws, did not become effective.

[18] *See* Certificate, Article FOURTH, Section III.

[19] 15 U.S.C. 78s(b).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(1).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* notes 1 and 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2012–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–07 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6256 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66563; File No. SR–CBOE–2012–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Weeklys Program

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 7, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rules 5.5 and 24.9 to allow the Exchange to open Short Term Option Series (''Weeklys options'') that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rules 5.5 and 24.9 to allow the Exchange to open Short Term Option Series (''Weeklys options'') that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.[5]

Currently, the Exchange may select up to 30 currently listed option classes on which Weekly options may be opened in the Weeklys Program and the Exchange may also match any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Weeklys Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class.

This proposal seeks to allow the Exchange to open Weekly option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules. This change is being proposed notwithstanding the current cap of 30 series per class under the Weeklys Program. This is a competitive filing and is based on

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63). The Weeklys Program was made permanent on April 27, 2009. *See* Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018).

approved filings and existing rules of The NASDAQ Stock Market LLC for the NASDAQ Options Market (''NOM'') and NASDAQ OMX PHLX, Inc. (''PHLX'').[6]

CBOE is competitively disadvantaged since it operates a substantially similar Weeklys Program as NOM and PHLX but is limited to listing a maximum of 30 series per options class that participates in its Weeklys Program (whereas PHLX and NOM are not similarly restricted).

The Exchange is not proposing any changes to the Weeklys Program other than the ability to open Weekly option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.

The Exchange notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. The Exchange believes that the current proposed revision to the Weeklys Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of series for the classes that participate in the Weeklys Program.

The proposed increase to the number of series per classes eligible to participate in the Weeklys Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar Weeklys Programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that expanding the Weeklys Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Weeklys Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to existing NOM and PHLX rules. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges with respect to their short term options programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission and permit such exchanges to open Weekly option series that are opened by other securities exchanges under their respective short term option rules.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[6] *See* Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72476 (November 23, 2011) (SR–NASDAQ–2011–138) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–PHLX–2011–131).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See supra* note 6.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–026 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6241 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66562; File No. SR–FINRA–2012–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Rule 9313 to Conform to FINRA Rule 9136 Regarding the Authority of Counsel to the National Adjudicatory Council

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 9313 to conform to FINRA Rule 9136 regarding the authority of counsel to the National Adjudicatory Council.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 4, 2012, the SEC approved a proposed rule change to FINRA's Code of Procedure.[4] As part of the proposed rule change, FINRA amended FINRA Rule 9313 to give counsel to the National Adjudicatory Council (''NAC'') the authority to establish the number of copies of all papers that shall be filed with the Adjudicator and specifications of such papers under FINRA Rule 9136. While FINRA Rule 9313 gives counsel to the NAC authority to establish the specifications of papers that shall be filed with the Adjudicator under FINRA Rule 9136, FINRA Rule 9136 does not provide discretion regarding the specifications for such papers. The proposed rule change amends FINRA Rule 9313(a)(8) to conform to FINRA Rule 9136 and removes counsel to the NAC's authority to establish the specifications of papers that are filed with the NAC. Nevertheless, counsel to the NAC will continue to have the authority to take the actions specified in the other subsections of FINRA Rule 9313(a).

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be the effective date of SR–FINRA–2011–044.[5]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 66096 (January 4, 2012), 77 FR 1524 (January 10, 2012) (Order Approving File No. SR–FINRA–2011–044).

[5] FINRA will announce the effective date of SR–FINRA–2011–044 in a *Regulatory Notice* to be published no later than March 4, 2012. The effective date will be no later than 30 days following publication of the *Regulatory Notice. See id.*

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2012–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2012–019 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6240 Filed 3–14–12; 8:45 am]

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intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66561; File No. SR–NYSEAmex–2012–16]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Changes to the Per Contract Execution Costs for Certain Participants

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') to increase the per contract execution costs for certain participants. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the per contract execution costs for certain participants. The Exchange believes the proposed fees will better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time.

First, the Exchange proposes an increase of $.03 per contract applicable to all NYSE Amex Options Market Maker participants. In conjunction with this increase, NYSE Amex Options Market Maker participants will have the ability to earn back the lower existing rate by executing as a NYSE Amex Options Market Maker 50,000 contracts or more on average each day in a month, excluding either Strategy Executions or QCC trades. The existing monthly fee cap applicable to NYSE Amex Options Market Makers will continue to apply.[3]

NYSE Amex Options Specialists and eSpecialists currently pay $.10 per contract in transaction fees. Under the proposal, the charge applicable to NYSE Amex Options Specialist and eSpecialists would increase to $.13 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those NYSE Amex Options Specialist or eSpecialist transactions would be reduced to $.10 per contract for that month.

NYSE Amex Options Market Makers that trade with directed order flow currently pay $.15 per contract in transaction fees. Under the proposal the

[3] See NYSE Amex Options Fee Schedule dated 2/1/12, endnote 5, available at *http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyseamexoptionsfeeschedule_020112.pdf.*

charge applicable to NYSE Amex Options Market Makers trading with directed order flow would increase to $.18 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those transactions in which a NYSE Amex Options Market Maker traded with directed order flow would be reduced to $.15 per contract for that month.

NYSE Amex Options Market Makers who trade with non-directed order flow currently pay $.17 per contract in transaction fees. Under the proposal the charge applicable to NYSE Amex Options Market Makers trading with non-directed order flow would increase to $.20 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those transactions in which a NYSE Amex Options Market Maker traded with non-directed order flow would be reduced to $.17 per contract for that month.

For purposes of calculating the 50,000 contract average daily volume (''ADV'') [4] threshold, the Exchange will aggregate all of a NYSE Amex Options participant's Market Maker activity. For example, a NYSE Amex Options participant in one month trades 30,000 contracts ADV as a NYSE Amex Options Specialist, 20,000 contracts ADV as a NYSE Amex Options eSpecialist, 15,000 contracts as a NYSE Amex Options Market Maker trading with directed order flow, and 15,000 contracts ADV trading as a NYSE Amex Options Market Maker trading with non-directed order flow. This NYSE Amex Options participant will be credited with 80,000 contracts ADV attributable to NYSE Amex Options Market Maker activity and as such will be eligible for the reduced rate for those transactions that month. Additionally, in the calculation of the 50,000 contract or more ADV threshold, the Exchange will exclude both Strategy Trades and QCC trades.

Professional Customers presently pay a fee of $.20 per contract for electronically executed transactions. Under the proposal, the charge applicable to electronically executed transactions on behalf of a Professional Customer will increase to $.23 per contract. The rate for manually executed or open outcry transactions for Professional Customers will remain unchanged at $.25 per contract.

Non-NYSE Amex Options Market Makers presently pay a fee of $.40 per contract for electronically executed transactions. Under the proposal the charge applicable to electronically executed transactions on behalf of a Non-NYSE Amex Options Market Maker will increase to $.43 per contract. The rate for manually executed or open outcry transactions for Non-NYSE Amex Options Market Makers will remain unchanged at $.25 per contract.

In addition, for purposes of consistency and clarity, in footnote five of the NYSE Amex Options Fee Schedule the Exchange is amending ''e-Specialist'' to ''eSpecialist,'' consistent with its use elsewhere in the Fee Schedule.

The proposed changes will be operative on March 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4) [6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed change to increase the fee for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers transacting on the Exchange is reasonable, given the growth in volumes over the past two years. The Exchange notes that ADV on the Exchange has increased from 1,653,156 contracts in January 2010 to 2,267,022 contracts ADV in January 2012, or an increase of over 37%. The proposed per contract increases range from a 7.5% increase for Non-NYSE Amex Options Market Makers to a 30% increase for Specialists and eSpecialists. The growth in trading volumes, option classes and messaging traffic has compelled the Exchange to continually invest in software, hardware and personnel, the cost of which can reasonably be expected to be borne by participants on the Exchange that consume the majority of those resources as evidenced by the volume of messages for quotes, orders and trades. For these reasons the Exchange believes it is reasonable to increase the per contract rate for NYSE Amex Specialists, eSpecialists, Market Makers that trade with directed and non-directed order flow, Professional Customers, and Non-NYSE Amex Options Market Makers.

The Exchange believes that the proposed change to increase the fee for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers is equitable and not unfairly discriminatory since the fees as noted are generally tied to an overall increase in activity on the Exchange. This heightened activity results in greater costs to the Exchange, which in turn is being passed back through to those participants who utilize the resources of the Exchange. The Exchange notes, for example, that Customers are prohibited from engaging in activity that can be construed as market making, and as such Customers do not use quotes to trade nor do they enter more than 390 orders per day on average, unlike the participants subject to the proposed fee change, resulting in less capacity usage than the participants subject to the proposed fee change.[7] For these reasons, the Exchange believes that the proposed $.03 per contract increase for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers is both equitable and not unfairly discriminatory.

The Exchange notes that the proposed $.03 per contract increase is not applicable to Firm Proprietary electronic transactions or Broker Dealer electronic transactions. As noted above, the fee increase is designed to offset the higher costs associated with the growth in trading volumes, option classes and messaging traffic and is specifically targeted at those users who consume the majority of those resources. The Exchange has found that, historically and at present, both Firm Proprietary electronic transactions and Broker Dealer electronic transactions comprise a small portion of the electronic transactions relative to the electronic transactions of the participants affected by this fee change. In fact, the majority of Firm Proprietary and Broker Dealer volumes on the Exchange are executed in open outcry and therefore place little burden on the infrastructure of the Exchange. For these reasons the Exchange feels that it is reasonable, equitable and not unfairly discriminatory to increase the fees as proposed, while leaving the fees for Firm Proprietary and Broker Dealer electronic transactions as they are.

[4] In calculating ADV, the Exchange will consider all trading days in a month, regardless of the length of the trading day.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* NYSE Amex Rule 995NY(b).

The Exchange believes that the ability for NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow to earn back the lower rate by executing more than 50,000 contracts ADV each day in a month is reasonable, equitable and not unfairly discriminatory for several reasons. First, NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow all subject themselves to various obligations,[8] including quoting obligations that compel them to put themselves at risk to trade with any and all interest in a large number of options at any one time. The Exchange believes it is important to continue to incentivize NYSE Amex Options Market Makers to obligate themselves to accept the risk of trading with any and all interest and as such it is warranted in permitting NYSE Amex Options Market Makers, which undertake those obligations as evidenced by their trading volumes, to earn back a lower per contract rate. Conversely, Professional Customers and Non-NYSE Amex Options Market Makers have no obligation whatsoever to post a bid or offer but rather can react selectively to the bids and offers posted by NYSE Amex Options Market Makers who do have obligations. It is these differing levels of obligations that cause the Exchange to believe that granting NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow the ability to earn back a lower rate by generating at least 50,000 contracts ADV each day in a month as a Market Maker is warranted. Further, the Exchange believes that excluding both Strategy Executions and QCC trades from the calculation of the 50,000 contract ADV threshold is appropriate since Strategy Trades are already subject to a lowered rate and are in turn capped while QCC trades can be effected without risk of trading with an unknown party. The Exchange does not believe that including QCC trades in the calculation of the 50,000 contract ADV threshold is appropriate, given the Exchange's desire to continue to incentivize NYSE Amex Options Market Makers to continue to provide firm quotes accessible by all participants. For these reasons, the Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory.

The Exchange also believes that the fees being proposed are reasonable because they are within the range of fees presently charged by other exchanges. For example, the International Stock Exchange (''ISE'') charges Non-ISE Market Makers $.45 per contract,[9] as well as a $.29 fee for Professional Customers in select symbols.[10] Additionally, NASDAQ OMX PHLX LLC charges market makers a rate of either $.22 or $.23 per contract depending on whether the option is part of the penny pilot or not.[11]

The Exchange operates in a highly competitive environment in which participants can not only move their business elsewhere, but also, if they choose, change the manner in which they access the Exchange. For example, Non-NYSE Amex Options Market Makers can avail themselves of the lower rates applicable to NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow by becoming NYSE Amex Options Market Makers. Likewise, a Professional Customers could either send fewer than 390 orders on average to begin trading as a Customer or they could register as a broker-dealer to trade on the Exchange as a Firm Proprietary trader or even a NYSE Amex Options Market Maker.

For the reasons noted above, the Exchange believes that the proposed fee changes are fair, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2012–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2012–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

[8] *See* NYSE Amex Rules 925NY, 925.1NY(b), 972NY(c), and 927.5NY.

[9] *See* ISE fee schedule dated 2/1/2012, page 1 of 22, available at *http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf.*

[10] *Id.* at 22.

[11] *See* NASDAQ OMX PHLX LLC Fee Schedule dated 2/6/2012, page 6 of 39, available at *http://nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2012–16 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6239 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66560; File No. SR–OCC–2012–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Public Directors

March 9, 2012.

I. Introduction

On January 20, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2012–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on February 2, 2012.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change would modify the corporate governance structure of OCC by: (i) Increasing the number of public directors on OCC's Board of Directors from one to three, (ii) creating a staggered term system for the public directors, and (iii) adding a public director to the Nominating Committee.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[4] In particular, Section 17A(b)(3)(C)[5] of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs.

The proposed change would allow OCC to increase the number of public directors from one to three, to create a staggered term system for the public directors, and to add a public director to the Nominating Committee. In proposing these changes to the composition of its Board of Directors, OCC stated that the changes would enhance the corporate governance structure at OCC. As such, the Commission finds that the proposed rule change is consistent with OCC's obligation under Section 17A(b)(3)(F) [6] of the Act's requirement that the rules of OCC be designed to remove impediments and perfect the mechanism of a national system for the clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) [7] of the Act, that the proposed rule change (File No. SR–OCC–2012–01) be, and hereby is, approved.[8]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6238 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66558; File No. SR–EDGX–2012–06]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2012 the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–66266 (January 27, 2012), 77 FR 5284 (February, 2012). In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

[4] 15 U.S.C. 78s(b)(2)(B).

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a technical amendment to the description of Footnote 9 and Flag CL to reflect the Commission's approval of the BATS BZX Exchange (''BATS BZX'') as a primary listing exchange.[4] Therefore, Footnote 9 will state that Flag O will be yielded and a fee of $0.0005 per share will be assessed if an order is routed to NYSE Arca & BATS BZX's closing process. This fee in footnote 9 ($0.0005 per share) gives a flat rate for the NYSE Arca & BATS BZX's closing processes, which is lower than other primary listing markets. Flag CL will apply to orders routed to a primary listing market's closing process except NYSE Arca and BATS BZX. In addition, the Exchange proposes to revise the descriptions on Flags CL, 8, and 9 to broaden their applicability to several routing strategies rather than just ROOC.[5] Therefore, the Exchange proposes that Flag CL state ''Routed to listing market closing process except NYSE Arca & BATS BZX.'' The Exchange proposes conforming amendments to Flags 8 and 9 to delete the ROOC routing strategy from the descriptions of these flags.

The Exchange proposes to amend Flag 9 and Flag 10 of its fee schedule. At this time, NYSE Arca offers its Members a rebate of $0.0021 for orders that add liquidity on Tapes A or C and a rebate of $0.0022 for orders that add liquidity on Tape B. The Exchange proposes to amend Flag 9 to account for the pass-through of the NYSE Arca rebate for adding liquidity through Tapes A or C and to create Flag 10 to account for the pass-through of the NYSE Arca rebate for adding liquidity on Tape B.

The Exchange proposes to make a technical amendment by re-naming Flag H as Flag HA, which represents all non-displayed orders that add liquidity (not including Midpoint Match orders). Flag HA will identify all non-displayed orders that add liquidity to EDGX, not including Midpoint Match orders, and the Exchange will continue to provide a rebate of $0.0015 per share. Finally, the Exchange proposes to make technical amendments to Flags G, L, N, and 3 to replace the ''and'' connector with ''or'' (i.e., ''Tapes A *or* C'' instead of ''Tapes A *and* C'') to make these references accurate.

In SR–EDGX–2011–37,[6] the Exchange amended several routing options contained in Rule 11.9(b)(3) to allow Users[7] more discretion if shares remain unexecuted after routing. In particular, Rule 11.9(b)(3)(c)(i)–(iii) was amended to provide that Users may elect that any remainder of an order be posted to another destination on the System routing table. In conjunction with this amendment, the Exchange proposes to create the following new flags:[8]

The Exchange proposes to add Flag RB for orders that are routed from EDGX to Nasdaq OMX BX and add liquidity. The Exchange proposes to assess a charge of $0.0018 per share to account for the pass-through of the Nasdaq OMX BX fee for adding liquidity.

The Exchange proposes to add Flag RC for orders that are routed from EDGX to the National Stock Exchange, Inc. (''NSX'') and add liquidity. The Exchange proposes to offer Members a rebate of $0.0026 per share to account for the pass-through of the NSX rebate for adding liquidity.

The Exchange proposes to add Flag RM for orders that are routed from EDGX to the Chicago Stock Exchange, LLC (''CHX'') and add liquidity. The Exchange proposes to assess no charge to account for the pass-through of no CHX fee for adding liquidity.

The Exchange proposes to add Flag RS for orders that are routed from EDGX to the Nasdaq OMX PSX (''PSX'') and add liquidity. The Exchange proposes to offer Members a rebate of $0.0024 per share to account for the pass-through of the PSX rebate for adding liquidity.

The Exchange proposes to add Flag RW for orders that are routed from EDGX to the CBOE Stock Exchange, LLC (''CBSX) and add liquidity. The Exchange proposes to assess a charge of $0.0017 per share to account for the pass-through of the CBSX fee for adding liquidity.

The Exchange proposes to add Flag RY for orders that are routed from EDGX to the BATS BYX and add liquidity. The Exchange proposes to assess a charge of $0.0003 per share to account for the pass-through of the BATS BYX fee for adding liquidity.

The Exchange proposes to add Flag RA for orders that are routed from EDGX to EDGA Exchange, Inc. (''EDGA'') and add liquidity. The Exchange proposes to offer Members a rebate of $0.0004 per share to account for the pass-through of the EDGA fee for adding liquidity.

The Exchange proposes to add Flag RZ for orders that are routed from EDGX to the BATS BZX and add liquidity. The Exchange proposes to offer Members a rebate of $0.0025 per share to account for the pass-through of the BATS BZX rebate for adding liquidity to BATS BZX.

Additional Changes to the EDGX Fee Schedule

The Exchange proposes to add *three* additional rebates to the fee schedule:

First, Members can qualify for the Mega Tape B Tier and be provided a $0.0034 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly: (i) Posts greater than or equal to .10% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) posts greater than or equal to .10% of the TCV in ADV in Tape B securities more than their January 2012 ADV added to EDGX.

Secondly, Members can qualify for the Mini Tape B Tier and be provided a $0.0030 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly: (i) Posts greater than or equal to .05% of the TCV in ADV more than their January 2012 ADV to EDGX; and (ii) posts greater than or equal to .05% of the TCV in ADV in Tape B securities more than their January 2012 ADV added to EDGX.

Finally, the Exchange proposes to amend footnote 11 on its fee schedule to provide that if a Member internalizes more than 4% of their ADV on EDGX (added, removed, and routed liquidity) and the Member, at a minimum, meets the criteria for the Mega Tier rebate of $0.0032 per share in footnote 1, then the Member's internalization[9] rate would be a rebate of $0.00015 per share, instead of a fee of $0.0001 per share if they met the tier provided in footnote 11 (posting 10,000,000 shares of more of ADV to EDGX) or a fee of $0.00035 per share if a Member did not meet the tier.

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the

[4] *See* Securities and Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] *See* EDGX Exchange Rule 11.9(b)(3)(n).

[6] *See* Securities Exchange Act Release No. 65903 (December 6, 2011), 76 FR 77284 (December 12, 2011) (SR–EDGX–2011–37).

[7] As defined in Rule 1.5(ee).

[8] These flags account for all postable destinations that are not already accounted for by other flags on the fee schedule.

[9] This occurs when two orders presented to the Exchange from the same Member (i.e., MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. Members are advised to consult Rule 12.2 respecting fictitious trading.

[10] 15 U.S.C. 78f.

objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed technical amendment to Footnote 9 and Flag CL to include BATS BZX as one of the primary listing exchanges adds additional transparency to its fee schedule for investors as it brings the schedule up-to-date to account for a new listing exchange. The Exchange also believes that the amendments to Flags 8,9, and CL to remove the specific ''ROOC routing strategy'' from those flags descriptions provides additional transparency to the fee schedule by broadening those flags applicability to several routing strategies. This encourages Members to utilize the Exchange to route to various destinations. The Exchange believes that the proposed technical amendment to delete Flag H and replace it with Flag HA promotes market transparency and improves investor protection by adding additional transparency to its fee schedule by alerting Members of the name change for the flag.

In addition, the Exchange believes that the proposed pass-through of rates for Flags 9, 10, RA, RB, RC, RM, RS, RW, RY, and RZ represent an equitable allocation of reasonable dues, fees and other charges since it reflects the pass-through of the rates associated with transactions done on other exchanges, as described above. In addition, EDGX believes that it is reasonable and equitable to pass-through certain rates to its Members. The Exchange also believes that the proposed pass-through of rates is non-discriminatory because it applies to all Members.

In addition, the Exchange believes that adding an additional method to achieve rebates of $0.0034 per share and $0.0030 per share, respectively, that are tied to January 2012 baselines and Tape B volume also represents an equitable allocation of reasonable dues, fees, and other charges since it encourages Members, based on growth over new baselines and in a new subset of securities (Tape B), to add increasing amounts of liquidity to EDGX each month. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. In addition, the rebates specific for Tape B securities are also reasonable in that other exchanges also employ similar pricing mechanisms. For example, Nasdaq OMX charges $0.0027 per share for market participant identifiers (''MPIDs'') removing 1.50% and adding 0.50% of Tape B consolidated volume, and MPIDs that remove 0.50% and add 0.25% of Tape B consolidated volume are charged $0.0028 per share. All other MPIDs are charged $0.0030 per share.[12] Similarly, NYSE Arca has rebates and fees that are specific to adding/removing in Tape B securities throughout their fee schedule.[13]

Finally, the Exchange believes that the rebates of $ 0.0034 per share and $0.0032 [sic] per share for the new Tape B tiers also represent an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

Currently, the Mega Tier rebates of $0.0034/$0.0032 per share have the most stringent criteria associated with them, and are $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0006/$0.0004 greater than the Super Tier rebate ($0.0028 per share).

For example, in order for a Member to qualify for the Mega Tier rebate of $0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 20,000,000 shares of ADV on EDGX in total, including during both market hours and pre and post-trading hours. The criteria for this tier is the most stringent as fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions.

In order to qualify for an equivalent rebate of $0.0034 per share (Mega Tape B tier), a Member would have to (i) post greater than or equal to .10% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) post greater than or equal to .10% of the TCV in ADV in Tape B securities more than their January 2012 ADV (baseline) added to EDGX. Assuming a TCV for January 2012 of 8.0 billion and a January 2012 ADV of 1 million shares, the Member would have to post greater than or equal to 9 million shares (8 million shares more than their January 2012 baseline of 1 million shares in ADV added to EDGX), and post greater than or equal to 9 million shares in Tape B securities to EDGX).

Another way a Member can qualify for the Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Assuming an average TCV for January 2012 (8.0 billion), this would be 60 million shares on EDGX. A second method to qualify for the rebate of $0.0032 per share would be to post 0.12% of the TCV (9.6 million shares) more than the Member's February 2011 or (as proposed, December 2011) ADV added to EDGX. Assuming the Member's February 2011/December 2011 ADVs are 1 million shares, the Exchange believes that requiring Members to post 10.6 million more shares than a February or December 2011 baseline ADV encourages Members to add increasing amounts of liquidity to EDGX each month. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of

[11] 15 U.S.C. 78f(b)(4).

[12] *See* Nasdaq OMX Rule 7018 [sic].

[13] *See* NYSE Arca Equities, Inc. Schedule of Fees and Charges for ExchangeServices.

liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

A Member can also qualify for the Mega Tier rebate of $0.0032 per share by adding or routing at least 4,000,000 shares of ADV prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) and adding a minimum of .20% of the TCV on a daily basis measured monthly, including during both market hours and/or pre and post-trading hours. Based on an average TCV for January 2012 (8.0 billion shares), a Member would qualify by adding 16 million shares during both market hours and/or pre and post-trading hours and adding or routing at least 4,000,000 shares of ADV during pre and post trading hours. The Exchange notes that fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions. Therefore, the amount of shares that the Exchange requires to be added or routed to satisfy this tier is less than for the Ultra Tier, for example, which is based on posting liquidity to EDGX during regular trading hours. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate.

In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier and Mega Tape B Tier, and be provided a rebate of $0.0031 per share, the Member would have to post 0.50% of TCV. Based on average TCV for January 2012 (8.0 billion shares), this would be 40 million shares on EDGX.

Members can qualify for the Mini Tape B Tier and be provided a $0.0030 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly: (i) posts greater than or equal to .05% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) posts greater than or equal to .05% of the TCV in ADV in Tape B securities more than their January 2012 ADV added to EDGX. Based on a TCV of 8.0 billion shares for January 2012 and a Member's ADV for January 2012 of 1 million shares (baseline), this would amount to (i) posting greater than or equal to 5 million shares to EDGX; and (ii) posting greater than or equal to 5 million shares in Tape B securities to EDGX.

The Super Tier has the least stringent criteria of the tiers mentioned above. In order for a Member to qualify for this rebate, the Member would have to post at least 10 million shares on EDGX and would qualify for a rebate of $0.0028 per share. As stated above, these rebates also result, in part, from lower administrative and other costs associated with higher volume. The reduction in rebate would allow the Exchange to recoup additional revenue to recover increased infrastructure and administrative expenses. This rebate also results, in part, from lower administrative and ther costs associated with higher volume.

Another way a Member can qualify for a rebate of $0.0028 per share is to post 0.065% of the TCV in ADV more than their February 2011 ADV added to EDGX. This tier allows Members even greater flexibility with respect to achieving an additional rebate and rewards growth patterns in volume by Members as this rebate's conditions encourage Members to add increasing amounts of liquidity to EDGX each month. Based on an ADV in February 2011 (baseline) of 1,000,000 shares, the Member would have to add 6.2 million shares total to qualify for such rebate. This rebate also results, in part, from lower administrative and other costs associated with higher volume.

The Exchange believes that the rebate for the internalization tier of $0.00015 per share represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities since it allows Members of the Exchange who inadvertently match against each other on both sides of a trade to avoid having to be penalized by paying an internalization fee of $0.00035 per share per side during regular or pre and post trading sessions (Flags E/5) or a fee of $0.0001 per share per side if they met the tier provided in footnote 11 of the fee schedule.

Finally, the internalization rebate is equitable in that it is in line with the EDGX fee structure [14] which currently has a maker/taker spread of $0.0006 per share (the standard rebate to add liquidity on EDGX is $0.0023 per share, while the standard fee to remove liquidity is $0.0029 per share). EDGX also has a variety of tiered rebates ranging from $0.0023–$0.0034 per share, which makes its maker/taker spreads range from $.0006 (standard add − standard removal rate), − $.0001 (standard removal rate − Super Tier rebate), − $0.0002, (standard removal rate − Ultra Tier rebate), − $0.0003 (standard removal rate − Mega Tier rebate of $0.0032), and − $.0005 (standard removal rate − Mega Tier rebate of $0.0034 per share). As a result of the customer internalization rebate, Members who internalized and met the criteria to satisfy the Mega Tier and the volume threshold of 4% of their ADV on EDGX would be rebated $0.00015 per share per side of an execution (total rebate of $0.0003 per share), which would be an internalization rate that is no more favorable the prevailing maker/taker spread by satisfying the Mega Tier rebate of $0.0032 ($ − 0.0003).

The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [15] and Rule 19b–4(f)(2) [16] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

[14] In SR–EDGX–2011–13 (April 29, 2011), the Exchange represented that ''it will work promptly to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.''

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 19b–4(f)(2).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2012–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–06 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6236 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66556; File No. SR–CBOE–2012–022]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange proposes to amend the Customer Large Trade Discount (the ''Discount'') to state that regular customer transaction fees will only be assessed for the first 10,000 CBOE Volatility Index (''VIX'') options contracts in a qualifying customer transaction. The Discount is intended to cap fees on large customer trades. Currently, there is no separate carve-out for VIX options, which means that regular customer transaction fees are currently assessed for the first 5,000 VIX options contracts in a qualifying customer transaction (the threshold for all index options is set at 5,000 contracts other than S&P 500 index options, for which the threshold is 10,000 contracts). The Exchange offers the Discount in order to encourage growth of new products. VIX options trading volume has increased greatly since it began trading, and due to increased demand, the Exchange proposes to raise increase [sic] the threshold before which customers cease paying transaction fees for qualifying VIX options transactions in order to recoup costs from developing VIX options, as well as other administrative costs. Moreover, because VIX options trade at a significantly lower price than the vast majority of other highly-traded index options, the notional value of 10,000 VIX options contracts is still much lower than the notional value of 5,000 contracts of nearly all other highly-traded index options (and 10,000 contracts of S&P 500 index options).[3]

The Exchange also proposes to lower the Hybrid Agency Liaison (''HAL'') Step-Up Rebate to $0.10 per contract. The HAL system allows CBOE Market-Makers to step up to meet the National Best Bid/Offer (''NBBO'') before an order is routed to another exchange through the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (''Linkage''). The HAL Step-Up Rebate is the rebate a Market-Maker receives per each contract against transaction fees generated from a transaction on the HAL system in a

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For reference, the February 2012 settlement value for VIX options was $20.44. Compare with the February 2012 settlement values for NASDAQ 100 index options ($2586.93), Russell 2000 index options (($833.16) and S&P 500 index options ($1363.80).

penny pilot class, provided that at least 60% of the market-maker's quotes in that class (excluding quotes in LEAPS series) in the prior calendar month were on one side of the NBBO. Currently, the rebate is $0.15 per contract. The Exchange proposes lowering it to $0.10 per contract as a change in the Exchange's competitive offering and in order to recoup costs related to Linkage and Exchange administrative fees. Further, the Exchange is not aware of any other exchanges that offer Market-Makers a rebate for stepping up to meet the NBBO.

The Exchange also proposes to amend its Linkage fees for customer orders. Currently, when CBOE sends a customer order with an original size of 100 or more contracts to another exchange(s) through the Linkage, CBOE passes through the actual transaction fee assessed by the exchange(s) to which the order was routed, minus $0.05 per contract. Also, when CBOE currently sends a customer order with an original size of 99 or fewer contracts to another exchange(s) through the Linkage, CBOE assesses no fee (thereby ''eating'' whatever fee is assessed by the exchange(s) to which the order was routed). As orders continue to be routed through Linkage, the Exchange finds that it is not currently financially prudent to continue to ''eat'' fees or pay for orders executed at other exchanges to the current extent.

As such, CBOE now proposes to eliminate the $0.05 discount for the routing of customer orders with an original size of 100 or more contracts to another exchange(s) through the Linkage, and instead simply pass through the actual transaction fee assessed by the exchange(s) to which the order is routed. For customer orders with an original size of 99 contracts or fewer routed to another exchange(s) through Linkage, CBOE proposes to pass through the actual transaction fees assessed by the exchange(s) to which the order was routed, minus $0.05 per contract (provided that such exchange(s) assess transaction fees). As such, the CBOE will no longer be paying for executions of customer orders with an original size of 100 or more contracts routed to another exchange through Linkage, or eating the entire costs of customer orders with an original size of 99 contracts or fewer routed to another exchange(s) through Linkage. These changes put CBOE on a more even financial footing with other exchanges that do not subsidize the costs of customer orders routed through Linkage. Even after instituting the proposed changes, CBOE still offers favorable Linkage pricing compared to other exchanges. For example, NYSE Amex, LLC (''Amex'') passes through fees for customer orders routed to other exchanges through Linkage and assesses its own $0.11 per contract fee on top.[4]

The proposed changes are to take effect March 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Raising the Discount threshold for VIX options to 10,000 customer contracts is reasonable because customers will still be receiving a discount for large trades that they would not otherwise receive, and because that amount is within the range of Discount thresholds for other products (the SPX threshold is 10,000). This change is equitable and not unfairly discriminatory because, while the threshold is lower for some products, it is the same as for SPX, and because all customers whose large trades qualify for the Discount will still receive it. Moreover, because VIX options trade at a significantly lower price than the vast majority of other highly-traded index options, the notional value of 10,000 VIX options contracts is still much lower than the notional value of 5,000 contracts of nearly all other highly-traded index options (and 10,000 contracts of S&P 500 index options).[7] Finally, raising the Discount threshold to 10,000 for VIX options is equitable and not unfairly discriminatory also because the Exchange expended considerable resources in developing VIX options and needs to recoup those and other related expenses.

Lowering the HAL Step-Up Rebate is reasonable because Market-Makers will still be receiving a rebate for stepping up to the NBBO. This change is equitable and not unfairly discriminatory because it will apply to all qualifying Market-Makers equally, and because it is still favorable to other exchanges, which offer no similar rebates for stepping up (to the Exchange's knowledge).

Eliminating the $0.05 discount for the routing of customer orders with an original size of 100 or more contracts to another exchange(s) through Linkage, and instead simply passing through the actual transaction fee assessed by the exchange(s) to which the order is routed, is reasonable because a customer will now merely be charged by CBOE the amount that CBOE is charged by the exchange(s) that execute the customer's order. This change is equitable and not unfairly discriminatory for the same reason; it is certainly equitable and not unfairly discriminatory to merely pass through the costs being assessed for a trade (indeed, it is equitable because that is the exact amount being assessed for the trade). Further, this fee will be applied equally; all customer orders with an original size of 100 or more contracts that are routed to another exchange(s) through Linkage will accrue the pass-through amount. Finally, merely passing through the costs is favorable to the Linkage arrangement on other exchanges such as Amex (which passes through fees for customer orders routed to other exchanges through Linkage and assesses its own $0.11 per contract fee on top).[8]

Passing through the Linkage fees for customer orders with an original size of 99 contracts or less, minus $0.05 per contract, is reasonable because a customer will still be assessed a lower amount than the cost to CBOE for routing such orders to another exchange(s). This is equitable and not unfairly discriminatory because it is certainly not unfair to pass through the costs being assessed for a trade (especially not when the Exchange is eating $0.05 per contract). Further, this fee will be applied equally; all customer orders with an original size of 99 contracts or less that are routed to another exchange(s) through Linkage will be assessed the actual transaction fees assessed by the exchange(s) that execute the orders, minus $0.05 per contract.

Finally, the Exchange believes that it is equitable and not unfairly discriminatory to continue to assess different Linkage fees for customer orders of 100 or more contracts than are assessed for orders of 99 or fewer contracts[9] because customer orders of

[4] *See* Amex Fee Schedule, Routing Surcharge.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Note 3.

[8] *See* Note 4.

[9] Prior to this proposed rule change, the Exchange also offered different Linkage fees for customer orders of 100 or more contracts (passing through Linkage fees, minus $0.05 per contract) than for orders of 99 or fewer contracts (no Linkage fees) (*See* Exchange Fees Schedule, Section 20).

99 or fewer contracts are generally entered by small retail customers, whereas customer orders of 100 or greater contracts are generally entered by larger, more active customers. Such customers are largely more sophisticated than smaller retail customers and have the capability to ''link'' orders themselves (send orders to the exchange displaying the NBBO), while smaller retail customers often do not have such capabilities. As such, CBOE does not want to unduly subsidize Linkage orders for parties that are capable of handling that function themselves. Moreover, different fee structures are appropriate for these different groups due to their different demographics and trading characteristics, and the Exchange currently has set this 100-contract threshold in multiple places in its Fees Schedule.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[11] of the Act and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–022 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6234 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Note 9 and also Exchange Fees Schedule, footnote (9), in which the Exchange waives transaction fees for customer orders of 99 contracts or less in ETF, ETN and HOLDRs options.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66552; File No. SR–C2–2011–043]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Changes to the Automated Improvement Mechanism

March 9, 2012.

I. Introduction

On December 30, 2011, C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to its Automated Improvement Mechanism (''AIM''). The proposed rule change was published for comment in the **Federal Register** on January 18, 2012.[3] On March 2, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

C2's AIM allows a Participant[5] to cross an agency order it presents as agent (''Agency Order'') against principal interest or a solicited order, provided that it first exposes the Agency Order to a one-second auction. If the Agency Order is 50 contracts or greater, the Participant (''Initiating Participant'') must stop the Agency Order at the national best bid or offer (''NBBO'') (or the order's limit price if better), and if it is less than 50 contracts, the Participant must stop the Agency Order at the NBBO improved by one minimum increment (or the order's limit price if better).[6] When initiating an auction, an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 66131 (January 11, 2012), 77 FR 2595 (January 18, 2012) (''Notice'').

[4] In Amendment No. 1, the Exchange represented that it will provide to the Commission the same data that the Chicago Board of Options Exchange, Incorporated provides to the Commission in connection with that exchange's AIM. *See* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006). Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

[5] The term ''Participant'' is defined in C2 Rule 1.1.

[6] *See* Rule 6.51(a)(2)–(3). *See also* Rule 6.51, Interpretations and Policies .03, noting that for at

Initiating Participant submitting an Agency Order to the AIM either must indicate a single price at which it seeks to cross the Agency Order (''single-price submission'') or must indicate that it will match as principal the price and size of all AIM responses (''auto-match'').[7] Once the Initiating Participant has submitted an Agency Order for processing, such submission may not be modified or cancelled.[8] A Request for Responses (''RFR'') will then be sent to any Participant that has elected to receive such requests, and the exposure period will last for one second.[9] If the auction attracts responses (which may be submitted by Participants), the Agency Order will be allocated at the best price(s), subject to the allocation algorithm in effect for the option class, and public customer orders in the book will have priority.[10] If the best price equals the initiating Participant's single-price submission, then the Initiating Participant will be allocated the greater of one contract or a specified percentage of the order, which percentage will be determined by the Exchange and may not be greater than 40% (or 50% in the case of a single-price submission where only one other market maker matches the price).[11]

The Exchange proposes to amend Rule 6.51 to allow an Initiating Participant to enter an Agency Order for fewer than 50 contracts into the AIM at the NBBO. The proposal eliminates the distinction between orders for fewer than 50 contracts and orders for 50 contracts or greater and thereby will allow an Initiating Participant to submit to AIM an Agency Order of any size at the NBBO.

The Exchange also proposes to allow an Initiating Participant to elect to auto-match competing prices from other market participants up to a designated limit price. The Initiating Participant will not be able to cancel the auto-match instruction after an AIM Auction commences and will have no control over the prices at which it receives an allocation in the auction other than the outside boundary established by the designated limit price.

The Exchange notes that, during the existing pilot for certain components of AIM, there is no minimum size requirement for orders that are eligible for AIM. In connection with the pilot program, the Exchange represents that it will continue to submit to the Commission reports providing AIM Auction and order execution data, including monthly data regarding executions through AIM of agency orders for 50 contracts or greater or for fewer than 50 contracts, as supporting evidence that, among other things, there is meaningful competition for all size orders.[12]

The Exchange represents that, in connection with the proposed auto-match feature, it will provide the Commission with the following additional data: (1) The percentage of trades effected through AIM in which the Initiating Participant submitted an Agency Order with an auto-match instruction that included a designated limit price and the percentage that did not include a designated limit price; and (2) the average amount of price improvement provided to AIM Agency Orders when the Initiating Participant submitted an auto-match instruction that included a designated limit price and the average amount that did not include a designated limit price, versus the average amount of price improvement provided to AIM Agency Orders when the Initiating Participant submitted a single price (no auto-match instruction).

At least one week prior to implementation of the proposed rule change, the Exchange will issue a notice to Participants informing them of the implementation of the additional auto-match feature. Participants will have an opportunity to make any necessary modifications to coincide with the implementation date.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to permit Initiating Participants to stop an Agency Order for fewer than 50 contracts at the better of the NBBO or the order's limit price will continue to provide customers with an opportunity for price improvement over the NBBO. The Commission also believes that the proposal will continue to provide Participants with incentives to compete in AIM Auctions. The Commission notes that once an Agency Order is submitted into the AIM Auction, the submission may not be modified or cancelled. Therefore, the Agency Order submitted to the AIM Auction will be guaranteed an execution price of at least the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO.

The Commission notes that the Initiating Participant's maximum allocation in the auction will be only 40% (or 50% in the case of a single price submission where only one other market maker matches the price). Further, C2's current rules provide for broad participation in the AIM Auction,[16] which should allow for a meaningful, competitive auction. Moreover, the Commission believes that the proposal may encourage increased participation in the AIM by Participants willing to trade with an Agency Order of less than 50 contracts at the NBBO but not better than the NBBO. The Commission also notes that the proposal makes the handling of AIM Agency Orders of under 50 contracts consistent with larger AIM Agency Orders. Finally, the Commission notes that it will continue to receive data from the Exchange pursuant to the AIM pilot program, and that it will have the opportunity to evaluate the data to assess the impact of the proposal.[17]

The Commission believes that the proposal to add an option for Initiating Participants to auto-match competing prices from other market participants up to a designated limit price is also consistent with the Act. The Commission believes that the change may encourage increased participation in AIM because it will allow Initiating Participants to trade with an Agency Order at a price better than the NBBO, but only up to a certain price.[18] In

least a Pilot Period expiring on July 18, 2012, there will be no minimum size requirement for orders to be eligible for the auction.

[7] *See* Rule 6.51(b)(1)(A).

[8] *See id.*

[9] *See* Rule 6.51(b)(1)(B)–(C).

[10] *See* Rule 6.51(b)(3)(A).

[11] *See* Rule 6.51(b)(3)(F).

[12] *See* Rule 6.51, Interpretation and Policies .03. *See also* Amendment No. 1, *supra* note 4.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Rule 6.51(b)(1)(D).

[17] *See* Amendment No. 1, *supra* note 4.

[18] The Commission also notes that the Exchange's auto-match proposal is similar to the current rules

Continued

addition, the Exchange will provide the Commission with data showing the average amount of price improvement provided to AIM Agency Orders when the Initiating Participant submitted an auto-match instruction versus the average amount of price improvement provided when there is no auto-match instruction. This additional data will allow the Commission to evaluate this change.

Thus, for the reasons set forth above, the Commission believes that the proposal is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–C2–2011–043), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6230 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66553; File No. SR–NYSEArca-2012–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of Twenty-Six Series of ProShares Trust II under NYSE Arca Equities Rule 8.200

March 9, 2012.

I. Introduction

On January 6, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of twenty-six series of the ProShares Trust II under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on January 24, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the following funds (each a ''Fund'' and, collectively, ''Funds'') pursuant to NYSE Arca Equities Rule 8.200, Commentary .02: ProShares UltraPro Australian Dollar, ProShares UltraPro Canadian Dollar, ProShares UltraPro Swiss Franc, ProShares UltraPro Euro, ProShares UltraPro U.S. Dollar, and ProShares UltraPro Yen (collectively, ''UltraPro Funds''); ProShares UltraPro Short Australian Dollar, ProShares UltraPro Short Canadian Dollar, ProShares UltraPro Short Swiss Franc, ProShares UltraPro Short Euro, ProShares UltraPro Short U.S. Dollar, and ProShares UltraPro Short Yen (collectively, ''UltraPro Short Funds''); ProShares Ultra Australian Dollar, ProShares Ultra Canadian Dollar, ProShares Ultra Swiss Franc and ProShares Ultra U.S. Dollar (collectively, ''Ultra Funds''); ProShares UltraShort Australian Dollar, ProShares UltraShort Canadian Dollar, ProShares UltraShort Swiss Franc and ProShares UltraShort U.S. Dollar (collectively, ''UltraShort Funds''); and ProShares Short Australian Dollar, ProShares Short Canadian Dollar, ProShares Short Swiss Franc, ProShares Short Euro, ProShares Short U.S. Dollar, and ProShares Short Yen (collectively, ''Short Funds''). NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[4] Each Fund is a series of the ProShares Trust II (''Trust''), a Delaware statutory trust.[5] ProShare Capital Management LLC (''Sponsor'') is the Trust's sponsor, and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. (''Administrator'') serves as the administrator, custodian, and transfer agent of the Funds. SEI Investments Distribution Co. (''Distributor'') serves as distributor of the Shares.

The UltraPro Funds seek daily investment results (before fees and expenses) that correspond to three times (+300%) the daily performance, whether positive or negative, of their corresponding benchmark, and the UltraPro Short Funds seek daily investment results (before fees and expenses) that correspond to three times the inverse (−300%) of the daily performance, whether positive or negative, of their corresponding benchmark. The Ultra Funds seek daily investment results (before fees and expenses) that correspond to twice (+200%) the daily performance, whether positive or negative, of their corresponding benchmarks, and the UltraShort Funds seek daily investment results (before fees and expenses) that correspond to twice the inverse (−200%) of the daily performance, whether positive or negative, of their corresponding benchmarks. The Short Funds seek daily investment results (before fees and expenses) that correspond to the inverse (−100%) of the daily performance, whether positive or negative, of their corresponding benchmarks (each corresponding benchmark is referred to as a ''Benchmark'' and, collectively, ''Benchmarks'').

Each of the Funds will hold futures contracts on the applicable Benchmark or, in the case of a Benchmark index, futures contracts on such Benchmark index or the Benchmark index components, that are traded on a United States exchange (''Benchmark Futures Contracts'') and, to a limited extent, forward contracts, as described below, to produce the economically ''inverse,'' ''leveraged,'' or ''inverse leveraged'' investment results, as set forth by each Fund's investment objective.

Each Fund seeks to achieve its investment objective by investing, under normal market conditions,[6] in Benchmark Futures Contracts. In the event position accountability rules or position limits are reached with respect to a particular Benchmark Futures Contract, the Sponsor may, in its

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of the Boston Options Exchange Group, LLC (''BOX'') and the International Securities Exchange, LLC (''ISE'') relating to the Price Improvement Period (''PIP'') and Price Improvement Mechanism (''PIM''), respectively. *See* Securities Exchange Act Release Nos. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR–ISE–2010–61) (notice of filing and immediate effectiveness of rule change to add auto-match functionality in the PIM) and 61805 (March 31, 2010), 75 FR 17454 (April 6, 2010) (SR–BX–2010–022) (notice of filing and immediate effectiveness of rule change to add auto-match functionality in the PIP).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66180 (January 18, 2012), 77 FR 3532 (''Notice'').

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] *See* registration statement on Form S–1, dated December 22, 2011 (File No. 333–178707) (''Registration Statement'').

[6] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

commercially reasonable judgment, cause the relevant Fund to obtain exposure through over-the-counter forward contracts referencing the particular exchange rate, index, or index components, or invest in other forward contracts not based on the particular exchange rate, index, or index components, if such instruments tend to exhibit trading prices or returns that correlate with the Benchmarks or any Benchmark Futures Contract and will further the investment objective of a Fund.[7] A Fund may also invest in forward contracts if the market for a specific Benchmark Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack, or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) to prevent a Fund from obtaining the appropriate amount of investment exposure to the affected Benchmark Futures Contracts directly.[8]

Each Fund will also invest in cash equivalents (such as shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities, whether denominated in U.S. dollars or the applicable foreign currency) that serve or will serve as collateral for the investments in futures and forward contracts. The Funds do not currently intend to invest directly in any currency, but may invest directly in U.S. Treasury securities.

The Funds' investments in Benchmark Futures Contracts and forward contracts may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such instruments, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of the instruments and imperfect correlation between the value of the instruments and the applicable Benchmark.

The Funds will not seek to achieve their stated investment objective over a period of time greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a simple multiple (*e.g.,* 2x, 3x, or −1x, −2x, −3x) of the period return of the corresponding Benchmark and may differ significantly.

If an UltraPro Fund (or UltraPro Short Fund) is successful in meeting its objective, its value on a given day (before fees and expenses) should gain (or lose in the case of an UltraPro Short Fund) approximately three times as much on a percentage basis as its corresponding Benchmark when the Benchmark rises on a given day. Conversely, its value on a given day (before fees and expenses) should lose (or gain in the case of an UltraPro Short Fund) approximately three times as much on a percentage basis as the corresponding Benchmark when the Benchmark declines on a given day.

If an Ultra Fund (or UltraShort Fund) is successful in meeting its objective, its value on a given day (before fees and expenses) should gain (or lose in the case of an UltraShort Fund) approximately twice as much on a percentage basis as its corresponding Benchmark when the Benchmark rises on a given day. Conversely, its value on a given day (before fees and expenses) should lose (or gain in the case of an UltraShort Fund) approximately twice as much on a percentage basis as the corresponding Benchmark when the Benchmark declines on a given day.

If a Short Fund is successful in meeting its objective, its value on a given day (before fees and expenses) should gain approximately as much on a percentage basis as the corresponding Benchmark when the Benchmark declines on a given day. Conversely, its value on a given day (before fees and expenses) should lose approximately as much on a percentage basis as the corresponding Benchmark when the Benchmark rises on a given day.

In seeking to achieve each Fund's daily investment objective, the Sponsor will use a mathematical approach to investing. Using this approach, the Sponsor will determine the type, quantity, and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with a Fund's objective. The Sponsor will rely upon a pre-determined model to generate orders that result in repositioning each Fund's investments in accordance with its daily investment objectives.

A number of factors may affect a Fund's ability to achieve a high degree of correlation with its Benchmark, and there can be no guarantee that a Fund will achieve a high degree of correlation. While the Funds do not expect that their daily returns will deviate adversely from their respective daily investment objectives, several factors may affect their ability to achieve this correlation. Among these factors are a Fund's expenses, including fees, transaction costs and the cost of the investment techniques employed by that Fund, bid-ask spreads, a Fund's Share prices being rounded to the nearest cent, changes to a Benchmark that are not disseminated in advance, and the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements.

ProShares UltraPro Australian Dollar, ProShares UltraPro Short Australian Dollar, ProShares Ultra Australian Dollar, ProShares UltraShort Australian Dollar, and ProShares Short Australian Dollar (''Australian Dollar Funds'')

The Australian Dollar Funds will be designed to track a multiple, the inverse, or an inverse multiple of the daily performance of the Australian dollar spot price versus the U.S. dollar (''AUD/USD''). The Benchmark for each of the Australian Dollar Funds will be the U.S. dollar price of the Australian dollar. The Australian Dollar Funds will use the 4 p.m., Eastern Time (''E.T.'') Australian dollar exchange rate as provided by Bloomberg, expressed in terms of U.S. dollars per unit of foreign currency, as the basis for the underlying Benchmark. The Australian dollar is the national currency of Australia and the currency of the accounts of the Reserve Bank of Australia, the Australian central bank. The official currency code for the Australian dollar is ''AUD.'' The Australian dollar is referred to in Australia as ''dollar.'' As with U.S. currency, 100 Australian cents are equal to one Australian dollar. In Australia, unlike most other countries, cash transactions are rounded to the nearest five cents. The most commonly used symbol used to represent the Australian dollar is ''A$.''

As of December 30, 2011, open interest in AUD/USD futures contracts traded on the Chicago Mercantile Exchange (''CME'') was approximately $11.56 billion. AUD/USD futures contracts had an average daily trading volume in 2011 of approximately 123,006 contracts.

ProShares UltraPro Canadian Dollar, ProShares UltraPro Short Canadian Dollar, ProShares Ultra Canadian Dollar, ProShares UltraShort Canadian Dollar, and ProShares Short Canadian Dollar (''Canadian Dollar Funds'')

The Canadian Dollar Funds will be designed to track a multiple, the inverse, or an inverse multiple of the

[7] To the extent practicable, the Funds will invest in forward contracts cleared through the facilities of a centralized clearing house.

[8] The Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Exchange represents that the Sponsor will take various steps to limit counterparty credit risk.

daily performance of the Canadian dollar spot price versus the U.S. dollar (CAD/USD). The Benchmark for each of the Canadian Dollar Funds will be the U.S. dollar price of the Canadian dollar. The Canadian Dollar Funds will use the 4 p.m., E.T. Canadian dollar exchange rate as provided by Bloomberg, expressed in terms of U.S. dollars per unit of foreign currency, as the basis for the underlying Benchmark. The Canadian dollar is the national currency of Canada and the currency of the accounts of the Bank of Canada, the Canadian central bank. The official currency code for the Canadian dollar is ''CAD.'' As with U.S. currency, 100 Canadian cents are equal to one Canadian dollar.

As of December 30, 2011, open interest in CAD/USD futures contracts traded on CME was approximately $11.66 billion. CAD/USD futures contracts had an average daily trading volume in 2011 of approximately 89,667 contracts.

ProShares UltraPro Swiss Franc, ProShares UltraPro Short Swiss Franc, ProShares Ultra Swiss Franc, ProShares UltraShort Swiss Franc, and ProShares Short Swiss Franc (''Swiss Franc Funds'')

The Swiss Franc Funds will be designed to track a multiple, the inverse, or an inverse multiple of the daily performance of the Swiss franc spot price versus the U.S. dollar (''CHF/USD''). The Benchmark for each of the Swiss Franc Funds will be the U.S. dollar price of the Swiss franc. The Swiss Franc Funds will use the 4 p.m., E.T. Swiss franc exchange rate as provided by Bloomberg, expressed in terms of U.S. dollars per unit of foreign currency, as the basis for the underlying Benchmark. The Swiss franc is the national currency of Switzerland and Liechtenstein and the currency of the accounts of the Swiss National Bank, the central bank of Switzerland. The official currency code for the Swiss franc is ''CHF.'' Each Swiss franc is equal to 100 Swiss centimes.

As of December 30, 2011, open interest in CHF/USD futures contracts traded on CME was approximately $4.99 billion. CHF/USD futures contracts had an average daily trading volume in 2011 of approximately 40,955 contracts.

ProShares UltraPro Euro, ProShares UltraPro Short Euro, and ProShares Short Euro (''Euro Funds'')

The Euro Funds will be designed to track a multiple, the inverse, or an inverse multiple of the daily change in the spot price of the euro versus the U.S. dollar (''EUR/USD''). The Benchmark for each of the Euro Funds will be the U.S. dollar price of the euro. The Euro Funds will use the 4 p.m., E.T. euro exchange rate as provided by Bloomberg, expressed in terms of U.S. dollars per unit of foreign currency, as the basis for the underlying Benchmark. The euro is the official currency of the Eurozone, which currently consists of 17 European states including: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia, and Spain. The euro is managed and administered by the European Central Bank and the European System of Central Banks.

As of December 30, 2011, open interest in EUR/USD futures contracts traded on CME was approximately $46.12 billion. EUR/USD futures contracts had an average daily trading volume in 2011 of approximately 336,947 contracts.

ProShares UltraPro U.S. Dollar, ProShares UltraPro Short U.S. Dollar, ProShares Ultra U.S. Dollar, ProShares UltraShort U.S. Dollar, and ProShares Short U.S. Dollar (''U.S. Dollar Funds'')

The U.S. Dollar Funds will be designed to track a multiple, the inverse or an inverse multiple of the daily performance of their Benchmark, the U.S. Dollar Index (''U.S. Dollar Index'' or ''Index'').[9] The U.S. Dollar Index is a geometrically-averaged calculation of six currencies weighted against the U.S. dollar. The six component currencies are the euro, Japanese yen, British pound, Canadian dollar, Swedish krona, and Swiss franc. The component currencies do not have the same weight. The euro has a weighting of 57.6%, the Japanese yen a weighting of 13.6%, the British pound a weighting of 11.9%, the Canadian dollar a weighting of 9.1%, the Swedish krona a weighting of 4.2%, and the Swiss franc a weighting of 3.6%. The U.S. Dollar Index is calculated by Bloomberg in real time approximately every 15 seconds using the spot prices of the Index's component currencies. The price used for the calculation of the Index is the mid-point between the Bloomberg top of the book bid/offer in the component currencies.

In addition to the data on EUR/USD, CAD/USD, CHF/USD, and JPY/USD futures contracts stated herein, as of December 30, 2011, open interest in U.S. Dollar Index futures contracts traded on ICE was approximately $5.44 billion. U.S. Dollar Index futures contracts had an average daily trading volume in 2011 of approximately 30,341 contracts. Open interest in British pound (''GBP/USD'') futures contracts traded on the CME was approximately $19.59 billion, and GBP/USD futures contracts had an average daily trading volume in 2011 of approximately 116,115 contracts. Open interest in Swedish krona (''SEK/USD'') futures contracts traded on the CME was approximately $16.79 million, and SEK/USD futures contracts had an average daily trading volume of approximately 8 contracts.

ProShares UltraPro Yen, ProShares UltraPro Short Yen, and ProShares Short Yen (''Yen Funds'')

The Yen Funds will be designed to track a multiple, the inverse, or an inverse multiple of the daily performance of the Japanese yen spot price versus the U.S. dollar (''JPY/USD''). The Benchmark for each of the Yen Funds will be the U.S. dollar price of the Japanese yen. The Yen Funds will use the 4 p.m., E.T. Japanese yen exchange rate as provided by Bloomberg, expressed in terms of U.S. dollars per unit of foreign currency, as the basis for the underlying Benchmark. The Japanese yen has been the official currency of Japan since 1871. The Bank of Japan has been operating as the central bank of Japan since 1882. The official currency code for the Japanese yen is ''YEN.''

As of December 30, 2011, open interest in JPY/USD futures contracts traded on the CME was approximately $25.75 billion. JPY/USD futures contracts had an average daily trading volume in 2011 of approximately 113,476 contracts.

Benchmark Futures Contracts Held by the Funds

All open Benchmark Futures Contracts held by the Funds will be traded on a United States exchange and will be calculated at their then current market value, based upon the last traded price before the net asset value (''NAV'') calculation time, for that particular futures contract traded on the applicable United States exchange on the date with respect to which NAV is being determined; provided, that if a futures contract traded on a United States

[9] The U.S. Dollar Index was created by the U.S. Federal Reserve in 1973. Following the ending of the 1944 Bretton Woods Agreement, which had established a system of fixed exchange rates, the U.S. Federal Reserve Bank began the calculation of the U.S. Dollar Index to provide an external bilateral trade-weighted average of the U.S. dollar as it freely floated against global currencies. Futures contracts based on the U.S. Dollar Index (''USDX'' or ''U.S. Dollar Index futures contracts'') were listed on November 20, 1985, and are now available only on the IntercontinentalExchange (''ICE'') electronic trading platform. Options on the futures contracts began trading on September 3, 1986, and are available both on the ICE electronic trading platform and on the ICE options trading floor.

exchange could not be liquidated on such day, due to the operation of daily limits or other rules of the exchange upon which that position is traded or otherwise, the Sponsor may in its sole discretion choose to determine a fair value price as the basis for determining the market value of such position for such day.

The Benchmark Futures Contracts trade on the following exchanges:

Fund benchmarks	Benchmark futures contracts	Exchange [10]
Australian dollar/U.S. dollar exchange rate	AUD/USD	CME
Canadian dollar/U.S. dollar exchange rate	CAD/USD	CME
European euro/U.S. dollar exchange rate	EUR/USD	CME
Japanese yen/U.S. dollar exchange rate	JPY/USD	CME
Swiss franc/U.S. dollar exchange rate	CHF/USD	CME
U.S. Dollar Index	USDX	ICE
	CAD/USD	CME
	CHF/USD	CME
	EUR/USD	CME
	GBP/USD	CME
	JPY/USD	CME
	SEK/USD	CME

[10] Each Benchmark Futures Contract trades electronically for 21 or more hours each trading session, beginning every Sunday evening and closing for the week on the following Friday evening.

Additional details regarding the Trust, Funds, Shares, trading policies of the Funds, creations and redemptions of the Shares, investment risks, fees, NAV calculation, the dissemination and availability of information about the underlying assets of the Funds, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[11]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information regarding the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The value of the Benchmarks will be disseminated by one or more major market data vendors and will be updated at least every 15 seconds during the NYSE Arca Core Trading. Data regarding the U.S. Dollar Index is also available from the Index provider to subscribers.[15] In addition, an Indicative Optimized Portfolio Value (''IOPV'') for each Fund, which will be calculated using the prior day's closing net assets of each Fund as a base and updating that value throughout the NYSE Arca Core Trading Session to reflect changes in the value of Benchmark Futures Contracts and forward contracts, if any, held by the Fund, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.[16] The NAV for each Fund will be calculated by the Administrator each trading day and will be disseminated daily.[17] The Trust will provide Web site disclosure of the portfolio holdings of each Fund daily and will include, as applicable, the description and notional value (in U.S. dollars) of each Fund's investments in Benchmark Futures Contracts and forward contracts, if any, and cash equivalents and the amount of cash held by each Fund. The intraday pricing and settlement values of the Benchmark Futures Contracts held by the Funds are readily available from CME, ICE, and other public sources or on-line information services. Real-time dissemination of spot pricing for the Australian dollar, Canadian dollar, Swiss franc, euro, and Japanese yen, and data for the U.S. Dollar Index are also available from major market data vendors. In addition, the Web site for the Funds and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair

[11] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] ICE Futures U.S., Inc. compiles, maintains, determines, and weights the components of the U.S. Dollar Index. ICE Futures U.S., Inc. is not engaged in the business of trading in commodities or securities, but operates a derivatives exchange. ICE Futures U.S., Inc. maintains a code of conduct applicable to all personnel that prohibits disclosure of any confidential information obtained during the course of one's employment and the use or disclosure of any material non-public information relating to changes to the composition of the U.S. Dollar Index or changes to the U.S. Dollar Index methodology in violation of applicable laws, rules, or regulations.

[16] According to the Exchange, several major market data vendors currently display and/or make widely available IOPVs published on CTA or other data feeds.

[17] The NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (*i.e.,* the value of its total assets less total liabilities) by its total number of Shares outstanding. The NAV calculation time for each Fund will be 4 p.m., E.T.

disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IOPV, the Benchmark value, or the value of the underlying Benchmark Futures Contracts occurs. If the interruption to the dissemination of the IOPV, the Benchmark value, or the value of the underlying Benchmark Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may halt trading in the Shares if trading is not occurring in the underlying Benchmark Futures Contracts, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[18] In addition, the Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Funds' Web site. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders[19] acting as registered Market Makers[20] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, including Trust Issued Receipts, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) The Exchange can obtain market surveillance information, including customer identity information, from ICE and CME, which are members of the Intermarket Surveillance Group.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in ''Creation Unit'' size (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IOPV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. The Information Bulletin will also reference, among other things, the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged exchange-traded funds (which include the Shares) and options thereon.[21] ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices.

(6) The minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares.

(7) For the initial and continued listing of the Shares, the Funds must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.[22]

(8) To the extent practicable, the Funds will invest in forward contracts cleared through the facilities of a centralized clearing house. In addition, with respect to investments in forward contracts, the Sponsor will attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk.

This approval order is based on all of the Exchange's representations.[23]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.

[18] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule in NYSE Arca Equities Rule 7.12 or by the halt or suspension of trading of the underlying Benchmark Futures Contracts. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[19] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[20] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

[21] *See* FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009). Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[22] *See* 17 CFR 240.10A–3.

[23] The Commission notes that it does not regulate the market for futures in which the Funds plan to take positions, which is the responsibility of the Commodity Futures Trading Commission (''CFTC''). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[24] 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSEArca-2012–04) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Secretary.

[FR Doc. 2012–6231 Filed 3–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66555; File No. SR–FINRA–2012–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Online Form NMA, the Standardized Membership Application Form Applicants Must File Pursuant to NASD Rule 1013 (New Member Application and Interview)

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend online Form NMA, the standardized membership application form applicants must file pursuant to NASD Rule 1013 (New Member Application and Interview) as part of their new membership application.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to NASD Rule 1012 (General Provisions) and NASD Rule 1013 (New Member Application and Interview), each applicant for FINRA membership must complete and electronically file the standardized online Form NMA as part of its new member application. The standardized online Form NMA was implemented several years ago to streamline the new member application process and to assist applicants in compiling a complete application package by identifying and organizing the information and supporting documentation required by NASD Rule 1013 into eight major sections: (1) Section I (General Information); (2) Section II (Business Lines); (3) Section III (Personnel); (4) Section IV (Net Capital and Sources of Funding); (5) Section V (Contractual and Business Arrangements); (6) Section VI (Policies and Procedures); (7) Section VII (Facilities); and (8) Section VIII (Recordkeeping).

Prior to FINRA's adoption of Form NMA, applicants would submit inadequate or incomplete new member applications that were subject to rejection pursuant to NASD Rule 1013(a)(3) as not substantially complete.[4]

FINRA is now proposing to revise Form NMA to further streamline the new member application process and to organize Form NMA according to the 12 standards for membership enumerated in NASD Rule 1014 (Department Decision) and further detailed below.[5] The revisions also seek to group information requests on specific topics that currently are located throughout existing Form NMA, as well as reduce current duplicative information requests in Form NMA. Additionally, revised Form NMA provides the following new user-friendly features intended to reduce the administrative burden placed on applicants:

- Information fields, included in standards 1, 2, 8, and 12, that are pre-populated with information previously provided by applicants to FINRA in other submissions (*e.g.,* Central Registration Depository (''CRD''®) entitlement forms and Form BD) or otherwise available to FINRA from CRD records (*e.g.,* continuing education status), thereby minimizing the time necessary for applicants to complete the new form;
- Information fields, included in standards 2, 3, 5, 6, 8, and 12, requesting information that applicants are currently required to provide during FINRA's review of the new member application that were not included in current Form NMA but rather obtained during application review through requests from FINRA for additional information. These information fields, which were added based on industry and staff feedback on existing Form NMA and the new member application process should reduce the need for extensive follow-up during the review process which currently results in processing delays; and
- Information fields, included in all standards except standard 9, allowing applicants to provide additional information, if applicable to their proposed business activities, structures, or circumstances.

Below is a synopsis of the content of revised Form NMA, by standard, and its nexus to existing Form NMA:

- *Standard 1 (Overview of the Applicant):*

This standard seeks certain applicant overview information currently contained primarily in Sections I (General Information) and VII (Facilities) of existing Form NMA (*e.g.,* formation information, identification of

[4] *See* Securities Exchange Act Release No. 53564 (March 29, 2006), 71 FR 16847 (April 4, 2006) (SR–NASD–2006–038) (Order Approving File No. SR–NASD–2006–038); *NASD Notice to Members* 06–16 (April 2006) (NASD Amends Rule 1013 to Adopt a Standardized Application Form (Form NMA) to be Used by All New Member Applicants); *see also* Securities Exchange Act Release No. 55412 (March 7, 2007), 72 FR 11414 (March 13, 2007) (Order Approving File No. SR–NASD–2007–015); *NASD Notice to Members* 07–20 (May 2007) (NASD Amends Rules 1012 and 1013 to Require Applicants for Membership to Submit Applications Using Online Form NMA).

[5] While NASD Rule 1014 sets forth 14 standards for membership, Form NMA does not elicit specific information from the applicant regarding standards 13 (FINRA does not possess information indicating that the applicant may circumvent the federal securities laws or FINRA rules) or 14 (the application is consistent with the federal securities laws and FINRA rules). *See* NASD Rule 1014(a)(13) and (14).

business activities, types of customers (and/or counterparties), owners, officers, directors, and control persons, validation of clearing arrangements).

• *Standard 2 (Licenses and Registrations):*

This standard consists of information requests regarding licenses and registrations (*e.g.,* required licenses and registrations, two-principal requirement waiver, Securities Information Center exemption, other self-regulatory organization registrations) currently contained primarily in Sections I and III (Personnel) of existing Form NMA as well as incorporating additional information requests (*e.g.,* intent to claim exemptions from registration or seek examination waivers for personnel).

• *Standard 3 (Compliance With Securities Laws, Just and Equitable Principles of Trade):*

This standard consists of specific requests for information (*e.g.,* disciplinary history) contained in Sections I and III of existing Form NMA that FINRA considers necessary for the applicant to demonstrate compliance with the requirements of this standard in the revised Form NMA and also incorporates additional information requests (*e.g.,* state or federal orders or decrees, statements of claims, settlement agreements).

• *Standard 4 (Contractual and Business Relationships):*

This standard includes the information requests regarding an applicant's contractual and business relationships currently contained in Sections I, IV (Net Capital and Sources of Funding) and V (Contractual and Business Arrangements) of existing Form NMA (*e.g.,* description of contractual arrangements, expense sharing agreements, financing arrangements, fidelity bonds or fidelity bond applications, support and service agreements, auditor information).

• *Standard 5 (Facilities):*

This standard consists of information requests regarding an applicant's facilities primarily contained in Section VII of existing Form NMA (*e.g.,* space sharing arrangements, leasing or sub-leasing arrangements). This standard also incorporates requests for additional information (*e.g.,* authorizations to sublet, deeds of ownership).

• *Standard 6 (Communications and Operational Systems):*

This standard includes information requests regarding an applicant's communications and operational systems currently in Sections VI (Policies and Procedures) and VII of existing Form NMA (*e.g.,* communications and operational systems descriptions, supervision arrangements of multiple locations, business continuity plan documents). The standard also incorporates requests for additional information (*e.g.,* information relating to the use of social media sites).

• *Standard 7 (Maintaining Adequate Net Capital):*

This standard includes information regarding an applicant's net capital requirements currently requested primarily in Section IV of existing Form NMA (*e.g.,* information on the nature and source of capital, additional funding plans, minimum net capital requirements, future funding sources).

• *Standard 8 (Financial Controls):*

This standard seeks information regarding an applicant's financial controls currently requested primarily in Sections I, III, and VI of existing Form NMA (*e.g.,* information regarding the FINOP's experience, financial controls, FINOP outside business activity notification) as well as incorporates requests for additional information (*e.g.,* net capital deficiency plans).

• *Standard 9 (Written Procedures):*

This standard seeks information regarding an applicant's written procedures currently requested in Sections III, VI, and VIII (Recordkeeping System) of existing Form NMA (*e.g.,* written supervisory procedures (''WSP''), WSP checklist, sample reports to support supervision and financial controls, heightened supervisory procedures attestation).

• *Standard 10 (Supervisory Structure):*

This standard seeks information regarding an applicant's supervisory structure currently requested in Sections I and III of the existing Form NMA (*e.g.,* information regarding supervisors' experience and duties, chief compliance officers' experience, non-FINOP outside business activities notifications).

• *Standard 11 (Books and Records):*

This standard seeks information regarding an applicant's books and records currently requested primarily in Section VIII of existing Form NMA (*e.g.,* recordkeeping system, sample books and records, recordkeeping service providers).

• *Standard 12 (Continuing Education):*

This standard seeks information regarding an applicant's continuing education (''CE'') obligations currently requested in Section VI of existing Form NMA (*e.g.,* firm element owner identification, CE checklist, CE needs assessment) as well as incorporates additional requests for information (*e.g.,* information regarding the applicant's CE deficiency mitigation plan).

FINRA worked closely with an industry task force, comprised of seven representatives from small and large firms, several of whom also act as consultants, during the development of revised Form NMA.[6] Among other things, the task force's input assisted FINRA to make changes intended to reduce applicants' administrative burden when completing Form NMA. Overall, FINRA believes that revised Form NMA will facilitate more effective and efficient application processing for applicants.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the revised Form NMA will be July 23, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed change restructures the content of existing Form NMA to make the requested information and documentation more consistent with the standards in NASD Rule 1014 against which they are evaluated and elicits information that applicants are currently required to provide during FINRA's review of the new member application. FINRA believes that revised Form NMA will reduce new member applicants' administrative burden and ensure a more streamlined and efficient membership application process for both FINRA and applicants.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[6] The task force also assisted FINRA in creating a new online Form CMA for continuing member applicants. *See* SR–FINRA–2012–018 (February 28, 2012) (proposed rule change amending NASD Rules 1012 and 1017 to adopt a new standardized online Form CMA).

[7] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2012–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–017 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6233 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66554; File No. SR–CME–2012–04]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Applicable to Its OTC Interest Rate Swap Clearing Offering

March 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME is proposing to amend the fee schedule that currently applies to its OTC Interest Rate Swap clearing offering. The text of the proposed changes is attached as Exhibit 5 to the proposed rule change, which is available on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html*.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently offers clearing for certain OTC Interest Rate Swap products. The filing proposes to amend the current fee schedule that applies to CME's OTC Interest Rate Swap (''IRS'') clearing fees. The proposed changes are related to fees and therefore will become effective immediately. However, the proposed fee changes will become operative as of March 12, 2012, and by their terms will expire on September 30, 2012.

The proposed fee changes will temporarily modify CME's current OTC IRS clearing fee schedule so that all house accounts of CME IRS Clearing Members will be charged a flat fee of $250 per ticket on a preallocation basis between March 12, 2012, and September 30, 2012, for any trades accepted for clearing where the effective date of the trade is prior to the date the trade was accepted for clearing (''backloaded trades''). The temporary fee rates will apply to all CME IRS Clearing members submitting backloaded trades to CME for clearing during the applicable time period.

CME believes the temporary modification to the CME IRS Fee Schedule will encourage IRS Clearing members to submit additional volume into the system to ensure readiness and help build open interest ahead of a regulatory mandate.

CME has also certified the proposed rule changes that are the subject of this

filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC'').

The proposed CME rule amendments establish or change a member due, fee, or other charge imposed by CME and therefore fall under Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder. CME believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and in particular, with Section 17A(b)(3)(D) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited and does not intend to solicit comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii) of the Act and paragraph (f)(2) of Rule 19b–4 and therefore became effective on filing. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

• Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2012–04 on the subject line.

• Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CME–2012–04 and should be submitted on or before April 5, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6232 Filed 3–14–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twelfth Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of meeting RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twelfth meeting of RTCA Special Committee 224, Airport Security Access Control Systems

DATES: The meeting will be held April 5, 2012, from 10 a.m.–4 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

April 5, 2012

• Chairmen's Opening Remarks, Introductions

• Review/Approve Summary—Eleventh Meeting

• Updates from the TSA (as required)

• Workgroup reports

• Industry solicitation progress report

• Association solicitation progress report

• Time and place of next meeting

• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 9, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–6346 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

59th Meeting: RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of meeting RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the fifty-ninth meeting of RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held April 19, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at National Center for Aviation Training, 4004 N. Webb Rd., Wichita, KS 67226.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), notice is hereby given for a meeting of Special Committee 135. The agenda will include the following:

April 19, 2012

- Chairmen's Opening Remarks, Introductions
  - Introduce FAA Representative
- Approval of Summary from the Fifty-Eighth Meeting—(RTCA Paper No. 025–12/SC135–687)
- Review proposed User's Guide
  - Section 9
  - Section 15
- Review Working Group activities
  - Section 4
  - Section 5
  - Section 16
  - Section 20
  - Section 21
  - Section 22
  - Section 23
- RTCA Workspace Presentation
- New/Unfinished Business
  - Errata Sheet
  - Change Proposal Form User's Guide
  - Change Proposal Form Rev H
  - Schedule for User's Guide
- FAA TSO Template
- Establish Date for Next SC–135 Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 8, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–6348 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No FAA–2012–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of criteria and application procedures for designation or redesignation, in the Military Airport Program (MAP), for the fiscal year 2012.

SUMMARY: This notice supplements the **Federal Register** Notice of September 22, 2011 and implements Military Airport Program (MAP) changes in the Federal Aviation Administration Modernization and Reform Act of 2012, Public Law 112–91, February 14, 2012. This supplementary notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 3 current (joint-use) or former military general aviation airports seeking designation or redesignation to participate in the MAP. Of the 15 current (joint-use) or former MAP slots the new legislation permits up to 3 general aviation airports to be selected for the program. Applicants who previously submitted applications based on the September 22, 2011 **Federal Register** notice do not need to reapply. Their applications will be considered for Fiscal Year 2012 MAP along with any applications received from additional general aviation airports as a result of this supplemental notice.

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from the Airport Improvement Program (AIP).

The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1994) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. Sec. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or

(2) the airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas, or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Applications must be received on or before April 16, 2012.

ADDRESSES: Submit an original and two copies of *Standard Form (SF) 424,* ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/airports/resources/forms/media/aip_sf424_2010.pdf* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation as a general aviation airport to participate in the fiscal year 2012 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the *FAA Web* site *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue SW., Washington, DC 20591 (202) 267–7436.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-

use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports are also eligible to receive grants from other categories of AIP funding.

Additional information required for application to the MAP may be found in the original **Federal Register** Notice Vol. 76, No. 184/Thursday, September 22, 2011/Notices Pg. 58861. The original notice may also be found at: *http://www.gpo.gov/fdsys/pkg/FR–2011–09–22/html/2011–24350.htm.*

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on March 7, 2012.

Elliott Black,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 2012–6350 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Tier 1 Environmental Impact Statement for the Chicago, Illinois, to Omaha, Nebraska, Regional Passenger Rail System

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: FRA is issuing this notice to advise the public that FRA with the Iowa Department of Transportation (Iowa DOT) will jointly prepare a Tier 1 Environmental Impact Statement (EIS) to evaluate potential passenger rail improvements for the Chicago, Illinois to Omaha, Nebraska regional passenger rail system in compliance with the National Environmental Policy Act of 1969 (NEPA). The Tier 1 EIS will evaluate environmental and related impacts for reasonable corridor-level passenger rail route alternatives between Chicago, Illinois and Omaha, Nebraska. The route alternatives will support proposed conventional locomotive-hauled, passenger train service, operating on track used jointly with freight trains, at an initial maximum speed of seventy-nine (79) to ninety (90) miles per hour (mph). The Tier 1 EIS will also examine passenger rail service levels.

FRA is issuing this Notice to alert interested parties, including the public and resource agencies about the EIS, to provide information on the nature of the proposed action, including the purpose and need for the proposed action, and possible route alternatives to be considered in the preparation of the Tier 1 EIS. To ensure all significant issues are identified and considered, all interested parties are invited to comment on the proposed scope of environmental review. Comments on the scope of the EIS, including the proposed action's purpose and need, the route alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations will be accepted online and in writing up to thirty (30) days following the publication of this Notice.

DATES: Iowa DOT will host an online, self-directed public scoping meeting during the months of March and April, 2012. The online public scoping meeting will be available for thirty (30) days following the publication of this Notice. Detailed information on the public scoping meeting is also available on the following Web site: *http://www.iowadot.gov/chicagotoomaha.* Interested parties, including the public and resource agencies can provide written comments on the Tier 1 EIS up to thirty (30) days following the publication of this Notice, by writing Ms. Tamara Nicholson, Director, Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

If a member of the public wishes to participate in the scoping process and does not have access to a computer or the internet, they can request an informational scoping package and comment form by contacting Ms. Tamara Nicholson at the above address or by telephone (515) 239–1052 or (800) 488–7119.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Martin, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Avenue Southeast, (Mail Stop 20), Washington, DC 20590, telephone (202) 493–6201; or Ms. Tamara Nicholson, Director, Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, telephone (515) 239–1052 or (800) 488–7119. Information and documents regarding the environmental review process will be made available for the duration of the Tier 1 EIS process on the following Web site: *http://www.iowadot.gov/chicagotoomaha.*

SUPPLEMENTARY INFORMATION: The FRA, in cooperation with Iowa DOT, will prepare a Tier 1 EIS to evaluate passenger rail service improvements from Chicago, Illinois to Omaha, Nebraska. The agencies will use a tiered process, as provided for in 40 CFR 1508.28 and in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28454) (Environmental Procedures), in the completion of the environmental review. Tiering is a staged environmental review process applied to environmental reviews for complex projects. The proposed Tier 1 EIS described in this Notice is a service level analysis that will examine a range of reasonable corridor route alternatives between Chicago, Illinois and Omaha, Nebraska and will consider improvements necessary to support additional passenger trains while accommodating the anticipated growth in freight rail traffic. The Tier 1 EIS will assess potential track improvements, a potential increase in the number of higher-speed passenger trains, potential corridor route alternatives between Chicago, Illinois and Omaha, Nebraska, and the associated transportation and environmental impacts. It is anticipated that the route alternative analysis will involve a screening process to identify reasonable and feasible alternatives for evaluation in the Tier 1 EIS. Potential route alternatives include the former Illinois Central route, the former Chicago and North Western route, the former Milwaukee Road route, the former Rock Island route, and the former Burlington route. The No-Action (or No-Build) Alternative will also be considered.

The Tier 1 EIS will also appropriately address Section 106 of the National Historic Preservation Act (see 36 CFR part 800), Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303) and other applicable Federal and state laws and regulations. The result will be a Tier 1 EIS NEPA document that addresses broad overall issues of concern for corridor decisions including, but not limited to:

- Describing the purpose and need for the proposed action.
- Describing the environment potentially affected by the proposed action.
- Developing evaluation criteria to identify route alternatives that meet the purpose and need of the proposed action and those that do not.
- Identifying the range of reasonable route alternatives that satisfy the purpose and need for the proposed action.

• Developing the no-build alternative to serve as a baseline for comparison.
• Describing and evaluating the potential environmental impacts and mitigation associated with the proposed route alternatives.
• Identifying component projects for Tier 2 NEPA evaluation as described below.

Follow-on Tier 2 assessment(s) will address component projects of the overall rail corridor improvement alternative selected in the Tier 1 EIS, and will incorporate by reference the data and evaluations included in the Tier 1 EIS. The Tier 2 NEPA evaluations will concentrate on the site-specific issues and alternatives relevant to implementing component projects of the selected Tier 1 alternative; and identify the environmental consequences and measures necessary to mitigate environmental impacts at a site-specific level of detail.

Study Area: The Chicago to Omaha corridor extends from Chicago Union Station, in downtown Chicago, Illinois on the east to a terminal in Omaha, Nebraska on the west. The study area consists of the five previously established passenger rail routes between Chicago and Omaha that pass through the states of Illinois and Iowa. Each route is approximately 500 miles long. In Illinois, the study area runs generally west from Chicago Union Station, which is the hub for the Midwest Regional Rail Initiative (MWRRI) to the Mississippi River and, depending on the route, is a distance of between 150 and 250 miles. In Iowa, the study area runs west from the Mississippi River across the entire state to the Missouri River, a distance of approximately 300 miles. The study area terminates in Omaha, which is located at the Missouri River, the eastern border of the state of Nebraska. The location for the terminal in Omaha will be identified as part of the Tier 1 EIS.

The five previously established passenger rail routes are numbered from north to south. For each route, the counties that are traversed in Illinois, Iowa, and Nebraska are listed east to west, as follows:

• Route 1, Illinois Central: Canadian National Railway via Rockford, Illinois, and Dubuque, Waterloo, and Fort Dodge, Iowa through Cook, DuPage, Kane, DeKalb, Boone, Winnebago, Stephenson, and Jo Daviess counties, Illinois; Dubuque, Delaware, Buchanan, Black Hawk, Butler, Franklin, Hardin, Hamilton, Webster, Calhoun, Sac, Crawford, Harrison, and Pottawattamie counties, Iowa; and Douglas County, Nebraska.

• Route 2, Chicago and North Western: Union Pacific Railroad via Clinton, Cedar Rapids, and Ames, Iowa through Cook, DuPage, Kane, DeKalb, Ogle, Lee, and Whiteside counties, Illinois; Clinton, Cedar, Linn, Benton, Tama, Marshall, Story, Boone, Greene, Carroll, Crawford, Harrison, and Pottawattamie counties, Iowa; and Douglas County, Nebraska.

• Route 3, Milwaukee Road: Canadian Pacific Railroad from Chicago to Sabula, Iowa, and Burlington Northern Santa Fe (BNSF) Railway from Bayard, Iowa, to Omaha, and abandoned except for several small stubs in between through Cook, DuPage, Kane, DeKalb, Ogle, and Carroll counties, Illinois; Jackson, Clinton, Jones, Linn, Benton, Tama, Marshall, Story, Boone, Dallas, Guthrie, Carroll, Crawford, Shelby, Harrison, and Pottawattamie counties, Iowa; and Douglas County, Nebraska.

• Route 4, Rock Island: CSX Transportation from Chicago to Utica, Illinois, and Iowa Interstate Railroad via Moline, Illinois, and Iowa City and Des Moines, Iowa through Cook, Will, Grundy, La Salle, Bureau, Henry, and Rock Island counties, Illinois; Scott, Muscatine, Cedar, Johnson, Iowa, Poweshiek, Jasper, Polk, Dallas, Madison, Guthrie, Adair, Cass, Pottawattamie counties, Iowa; and Douglas County, Nebraska.

• Route 5, Burlington: BNSF Railway via Galesburg, Illinois, and Burlington and Ottumwa, Iowa through Cook, DuPage, Kane, Kendall, DeKalb, La Salle, Bureau, Henry, Knox, Warren, and Henderson counties, Illinois; Des Moines, Henry, Jefferson, Wapello, Monroe, Lucas, Clarke, Union, Adams, Montgomery, Mills, and Pottawattamie counties, Iowa; and Douglas County, Nebraska.

Purpose and Need: The Chicago to Omaha Regional Passenger Rail System would provide a competitive passenger rail transportation option between Chicago and Omaha to help meet current and future demand for travel in the study area. The proposed action would create a competitive rail transportation alternative to automobile, bus, and air service and would meet the need for a rail travel option by:

• Decreasing travel times
• Increasing frequency of service
• Improving service reliability
• Providing safe and efficient service
• Providing amenities to improve passenger ride quality and comfort
• Promoting environmental benefits: reduced air pollutant emissions, improved land use options, and fewer adverse impacts to surrounding habitat and water resources

The need for the proposed improvements in the study area stems from travel demand and increasing congestion, resulting from population growth and changing demographics along the corridor from Chicago, Illinois to Omaha, Nebraska as well as the lack of competitive and attractive travel alternatives to highway and air transportation.

Midwest Regional Rail Initiative (MWRRI): The MWRRI is a cooperative, multi-agency effort that began in 1996 and involves nine Midwest states (Indiana, Illinois, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin) as well as the FRA. MWRRI elements include: Use of 3,000 miles of existing rail right of way to connect rural and urban areas; operation of a hub and spoke passenger rail system; introduction of modern, high-speed trains operating at speeds up to 110 mph; and multi-modal connections to improve system access. The goal of the MWRRI is to develop a passenger rail system that offers business and leisure travelers shorter travel times, additional train frequencies, and connections between urban centers and smaller communities. The proposed EIS will evaluate one aim of the MWRRI ''to meet current and future regional travel needs through significant improvements to the level and quality of passenger rail service'' (Transportation Economics & Management Systems, Inc., September 2004).

Alternatives to be Considered: The Tier 1 EIS will evaluate preliminary alternatives including a No-Build Alternative and various Build Alternatives. The No-Build Alternative is defined to serve as the baseline for comparison of all alternatives. The No-Build Alternative represents the transportation system as it exists, and as it will exist after completion of programs or projects currently funded or being implemented. The No-Build Alternative will draw upon the State Transportation Improvement Program and existing freight and passenger rail plans.

The Tier 1 EIS will assess environmental and related impacts for a range of reasonable Build Alternatives. The Build Alternatives are corridor-level route alternatives between Chicago, Illinois and Omaha, Nebraska for a conventional locomotive-hauled, passenger train service, operating on track used jointly with freight trains, at an initial maximum speed of seventy-nine (79) to ninety (90) miles per hour (mph), and infrastructure improvements to support the additional passenger trains. Several route alternatives were identified for the Tier 1 EIS based on

review of previous studies. In addition, the Tier 1 EIS will consider ideas or concepts that are suggested by resource agencies or the public during the scoping process. Potential route alternatives for the corridor were identified by the MWRRI and the Iowa DOT 10 Year Strategic Passenger-Rail Plan. The previously established primary passenger rail routes are the Illinois Central, Chicago & North Western, Milwaukee Road, Rock Island, and Burlington and are nominally oriented from north to south and east to west. The MWRRI considered these five routes as well as a combination of the Rock Island and Burlington routes to provide a different approach into Chicago, Illinois. Tier 2 component projects will also be identified during the Tier 1 EIS process. Tier 2 project component assessments will incorporate by reference the data and evaluations included in the Tier 1 EIS.

Possible Effects: The FRA and Iowa DOT will evaluate direct, indirect and cumulative changes to the social, economic, and physical environment, including land use and socioeconomic conditions, ecology, water resources, historic and archaeological resources, visual character and aesthetics, contaminated and hazardous materials, transportation, air quality, noise and vibration. Potential for disproportionate and adverse impacts to environmental justice communities will be examined for all alternatives, and accommodations made for limited English proficiency and Title VI requirements. The evaluation will take into account both beneficial and adverse affects and identify measures to avoid, minimize, and mitigate adverse community and environmental impacts. The analysis will be undertaken consistent with NEPA, CEQ regulations, Section 106 of the National Historic Preservation Act, the Endangered Species Act, Clean Air Act, Clean Water Act, FRA's Environmental Procedures, Iowa DOT guidance, and Section 4(f) of the Department of Transportation Act of 1966, along with other applicable Federal and state regulations.

Scoping Process: The FRA and Iowa DOT are inviting comments and suggestions regarding the scope of the Tier 1 EIS from all interested parties, to ensure that all issues are addressed related to this proposal and any significant impacts are identified. Comments or questions concerning the proposed action and the Tier 1 EIS should be directed to the Iowa DOT at the address above. Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies, Native American tribes and to private organizations who might have previously expressed or who are known to have an interest in this proposal. Federal agencies with jurisdiction by law or special expertise with respect to potential environmental issues will be requested to act as a Cooperating Agency in accordance with 40 CFR 1501.6.

Iowa DOT will lead the outreach activities, beginning with the online scoping meeting described above in DATES. Public involvement initiatives, including public meetings, newsletters, and outreach will be held throughout the course of this study. Opportunities for public participation will be announced through mailings, notices, advertisements, press releases and a project Web site: *http://www.iowadot.gov/chicagotoomaha.*

Issued in Washington, DC, on March 12, 2012.

Paul Nissenbaum,

Associate Administrator for Railroad Policy and Development, Federal Railroad Administration.

[FR Doc. 2012–6304 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0053]

Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Announcement of technical workshop.

SUMMARY: On February 24, 2012, NHTSA published proposed Visual-Manual Driver Distraction Guidelines for In-Vehicle Electronic Devices. NHTSA is announcing a public workshop to discuss technical issues relevant to these proposed Guidelines. The workshop will include brief NHTSA presentations outlining the content of and basis for the Guidelines and will provide opportunities for the public to ask questions and present information on the technical aspects of the proposed Guidelines.

DATES: *Technical Workshop.* The technical workshop will be held on March 23, 2012, at the location indicated in the **ADDRESSES** section below. The workshop will start at 9 a.m. and is scheduled to continue until 12 p.m., local time. However, the workshop will continue beyond 12 p.m. if there are presenters who have not yet had a chance to make their presentation or if the presiding official believes that allowing the discussion to extend beyond that time would be beneficial. If you would like to attend the technical workshop and either make a presentation or participate in the discussion, please contact the person identified under **FOR FURTHER INFORMATION CONTACT** no later than March 16, 2012.

Written comments. As announced in the proposal, to be assured of consideration, written comments on the proposed NHTSA Guidelines must be received by April 24, 2012 (77 FR 11200).

ADDRESSES: The March 23, 2012 technical workshop will be held at the National Highway Traffic Safety Administration Vehicle and Research Test Center, 10820 State Route 347—Bldg. 60, East Liberty, Ohio 43319.

FOR FURTHER INFORMATION CONTACT: If you would like to attend the technical workshop and either make a presentation or participate in the discussion, please contact Elizabeth Mazzae, by the date specified under **DATES** section above, at: Applied Crash Avoidance Research Division, Vehicle Research and Test Center, NHTSA, 10820 State Route 347—Bldg. 60, East Liberty, Ohio 43319; Telephone (937) 666–4511; Facsimile: (937) 666–3590; email address: *elizabeth.mazzae@dot.gov.*

Please provide her with the following information: Name, affiliation, address, email address, telephone and fax numbers, and indicate whether you require accommodations such as a sign language interpreter or translator or whether you plan to use technological aids (e.g., audio-visuals, computer slideshows).

You may learn more about the proposed NHTSA Guidelines by visiting the Department of Transportation's Web site on distracted driving, *Distraction.gov,* NHTSA's Web site, *www.nhtsa.gov,* or by searching the public docket (NHTSA–2010–0053) at *www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The proposed NHTSA Guidelines are meant to promote safety by discouraging the introduction of excessively distracting devices in vehicles. These NHTSA Guidelines, which are voluntary, apply to communications, entertainment, information gathering, and navigation devices or functions that are not required to operate the vehicle safely and that are operated by the driver through visual-manual means (meaning

the driver looking at a device, manipulating a device-related control with the driver's hand, and watching for visual feedback).

The proposed NHTSA Guidelines list certain secondary, non-driving related tasks that, based on NHTSA's research, are believed by the agency to interfere inherently with a driver's ability to safely control the vehicle. The Guidelines recommend that those in-vehicle devices be designed so that they cannot be used by the driver to perform such tasks while the driver is driving. For all other secondary, non-driving-related visual-manual tasks, the NHTSA Guidelines specify a test method for measuring the impact of performing those tasks on driving safety and time-based acceptance criteria for assessing whether a task interferes too much with driver attention to be suitable to be performed while driving. If a task does not meet the acceptance criteria, the NHTSA Guidelines recommend that in-vehicle devices be designed so that the task cannot be performed by the driver while driving.

In addition to identifying inherently distracting tasks and providing a means for measuring and evaluating the level of distraction associated with other non-driving-related tasks, the NHTSA Guidelines set forth several design recommendations for in-vehicle devices in order to minimize their potential for distraction.

The proposed NHTSA Guidelines were published in the **Federal Register** on February 24, 2012 (77 FR 11200) and are available on the Web pages listed above under **FOR FURTHER INFORMATION CONTACT** and also in the rulemaking docket. The notice is also available at *http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Distraction_NPFG-0216 2012.pdf.*

Background information concerning the proposal in particular and the problem of distracted driving in general is available at *http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/U.S.+Department+of+Transportation+Proposes+'Distraction'+Guidelines+for+Automakers* and at *http://www.distraction.gov/.*

The purpose of the public technical workshop is to provide interested parties with an opportunity to discuss issues relevant to the technical aspects of NHTSA's Visual-Manual Driver Distraction Guidelines. The workshop will include brief NHTSA presentations outlining the content and basis of the proposed Guidelines. The workshop will be held in a lab environment.

Technical Workshop Procedures. Because the technical workshop will be located in a lab environment, NHTSA requests that the number of those attending from each affiliation be held to a minimum. For security purposes, photo identification is required to enter NHTSA's Vehicle Research and Test Center.

NHTSA will conduct the workshop informally. Thus, technical rules of evidence will not apply. There will be an opportunity for attendees to make presentations and ask NHTSA staff questions related to the technical aspects of the proposed Guidelines.

Once NHTSA establishes how many people have registered to make presentations at the workshop, we will allocate an appropriate amount of time to each participant, allowing time for necessary breaks. In addition, we will reserve a block of time for anyone else in the audience who wants to make a presentation.

For planning purposes, each speaker should anticipate speaking for approximately 15–20 minutes, although we may need to shorten that time if there is a large turnout. We will accommodate your requested presentation time to the extent we can, consistent with the other requests we receive. We request that you bring three copies of your statement or other material (*e.g.,* film clips and slides) so that it can be placed into the docket.

If you plan to use technological aids (*e.g.,* audio-visuals, computer slideshows), you must notify the contact person in the **FOR FURTHER INFORMATION CONTACT** section above in advance of the meeting and make advance arrangements with that person regarding the use of any aids in order to facilitate set-up.

Presenters wishing to provide supplementary information should submit it by the April 24th deadline for written comments. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the technical workshop.

Issued on March 9, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–6266 Filed 3–12–12; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0342]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On December 27, 2011, in accordance with the Paperwork Reduction Act of 1995, PHMSA published a notice with request for comments in the **Federal Register** (76 FR 81013). The notice regards the renewal of an information collection titled, ''Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification,'' and identified under Office of Management and Budget (OMB) control number 2137–0584. PHMSA received no comments on the notice and is now forwarding the information collection request to OMB for approval and providing an additional 30 days for comments.

DATES: Interested persons are invited to submit comments on or before April 16, 2012.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, directly to OMB, Office of Information and Regulatory Affairs, Attn: Desk Officer for the U.S. Department of Transportation (PHMSA), 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal titled, ''Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification'' (OMB control number 2137–0584).

PHMSA notes that the **Federal Register** notice published on December 27, 2011, contained a clerical error. Specifically, the notice inadvertently

identified the burden hour estimated for the information collection at ''3,820''. As reflected in this notice, the correct burden hour estimate for the information collection is ''3,920''.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for the information collection activity. PHMSA requests comments on the following information collection:

Title: Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification.

OMB control number: 2137–0584.

Current Expiration Date: 6/30/2012.

Abstract: A state must submit an annual certification to assume responsibility for regulating intrastate pipelines, and certain records must be maintained to demonstrate that the state is ensuring satisfactory compliance with the pipeline safety regulations. PHMSA uses this information to evaluate a state's eligibility for Federal grants.

Affected Public: State and local governments.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 67.

Total Annual Burden Hours: 3,920.

Frequency of Collection: Annual.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on March 8, 2012.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2012–6206 Filed 3–14–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 8, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Applicant No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
15547–N		Southern California Edison (SCE) Chino, CA.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and 175.30(a)(1) in that the explosives are forbidden by cargo aircraft.	To authorize the transportation in commerce of certain forbidden explosives in sling load operations in remote areas of the US without being subject to hazard communication requirements, quantity limitations, and certain loading and stowage requirements. (mode 4)
15559–N		Colorado Mountain Helicopters, LLC dba New Air Helicopters Logan, UT.	49 CFR 49 CFR 172.101 Column (9B), 172.200, 172.204 (c)(3), 172.301 (c), 173.27 (b)(2), 175.30 (a)(1), 175.33, 175.75, 178.	To authorize the transportation in commerce of certain forbidden explosives in sling load operations in remote areas of the US without being subject to hazard communication requirements, quantity limitations, and certain loading and stowage requirements. (mode 4)
15566–N		Lake and Peninsula Airlines, Inc. Port Alsworth, AK.	49 CFR 173.302(f)(3) and (f)(4).	To authorize the transportation in commerce of certain cylinders of compressed oxygen, when no other practical means of transportation exist, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test. (modes 4, 5)
15568–N		ATK Launch Systems Corinne, UT.	49 CFR 172.101(b)	To authorize the transportation in commerce soils containing solid explosive compounds (not greater than 3%) in bulk. (mode 1)

Applicant No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15569–N		Vexxel Composites, LLC Brigham City, UT.	49 CFR 173.302a(a)(1), 175.3, and 180.205.	To authorize the manufacture, marking, sale, and use of non-DOT specification fully-wrapped carbon fiber reinforced seamless stainless steel lined cylinders that meets all requirements of ISO 11119–2 for use in transporting 2.2 materials. (modes 1, 2, 3, 4, 5)
15573–N		Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.309(a)	To authorize the transportation in commerce of a non-specification cylinder EN1964. (mode 1)
15577–N		Olin Corporation Oxford, MS.	49 CFR 172.101 column 8, 173.62 (b), 173.60(b)(8), 172.300 (d).	To authorize the transportation in commerce of certain Division 1.4 in non-DOT specification packagings without labels and markings to a distance not to exceed 200 yards by motor vehicle, subject to the limitations and special requirements specified herein. (mode 1)
15580–N		Wisconsin Central Ltd. Homewood, MN.	49 CFR 174.85	To authorize the positioning of placarded cars without a buffer car. (mode 2)

[FR Doc. 2012–6062 Filed 3–14–12; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New Application
M—Modification Request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on March 6, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
10898–M	Hydac Corporation Bethlehem, PA	3	03–31–2012
14193–M	Honeywell International, Inc., Morristown, NJ	4	03–31–2012
8723–M	Maine Drilling & Blasting Auburn, NH	4	03–31–2012
10646–M	Schlumberger Technologies Corporation Sugar Land, TX	4	03–31–2012
14372–M	Kidde Aerospace and Defense Wilson, NC	4	12–31–2011
11516–M	The Testor Corporation Rockford, IL	4	12–31–2011
11670–M	Schlumberger Oilfield UK Plc Dyce, Aberdeen Scotland, Ab	3	03–31–2012
	New Special Permit Applications		
.			
15080–N	Alaska Airlines Seattle, WA	1	03–31–2012
15229–N	Linde Gas North America LLC New Providence, NJ	4	03–31–2012
15283–N	KwikBond Polymers, LLC Benicia, CA	4	03–31–2012
15334–N	Floating Pipeline Company Incorporated Halifax, Nova Scotia	4	03–31–2012
15322–N	Digital Wave Corporation Englewood, CO	4	03–31–2012
15393–N	Savannah Acid Plant LLC Savannah, GA	3	03–31–2012
15451–N	NK CO., LTD Gangseo-Gu, Busan	4	05–30–2012
15510–N	TEMSCO Helicopters, Inc. Ketchikan, AK	4	03–31–2012
	Party to Special Permits Application		
12134–P	Riceland Foods, Inc. Stuttgart, AR	4	03–31–2012
12412–P	Club Care Inc. dba Knock Out Chemicals Doraville, GA	4	03–31–2013
	Renewal Special Permits Applications		
14482–R	Classic Helicopters Limited, L.C. Woods Cross, UT	4	03–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
11749–R	Occidental Chemical Corporation Dallas, TX	4	03–31–2012
7891–R	Aldrich Chemical Company Inc. Milwaukee, WI	4	03–31–2012
12283–R	Interstate Battery of Alaska Anchorage, AK	4	03–31–2012
10709–R	Schlumberger Technologies Corporation Sugar Land, TX	4	03–31–2012
11227–R	Schlumberger Well Services a Division of Schlumberger Technology Corporation Sugar Land, TX.	4	03–31–2012
9929–R	Alliant Techsystems Inc. Propulsion & Controls (Former Grantee ATK Elkton) Elkton, MD	4	03–31–2012
11903–R	Comptank Corporation Bothwell, ON	4	10–31–2012
4850–R	Schlumberger Technology Corporation Sugar Land, TX	4	03–31–2012
11110–R	United Parcel Services Company Louisville, KY	4	10–31–2012
8445–R	AET Environmental, Inc. DENVER, CO	4	03–31–2012
11043–R	AET Environmental, Inc. DENVER, CO	4	03–31–2012
7887–R	21st Century Environmental Management, LLC of RI Providence, RI	4	03–31–2012
14823–R	FedEx Ground Package System, Inc. Moon Township, PA	4	05–31–2012
10043–R	Texas Instruments Incorporated (''TI'') Dallas, TX	4	03–31–2012
12095–R	Union Tank Car Company Chicago, IL	4	03–31–2013
12095–R	American Railcar Industries St. Charles, MO	4	03–31–2013
8009–R	FIBA Canning, Inc. Scarborough, ON	4	05–30–2012

[FR Doc. 2012–6064 Filed 3–14–12; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 12, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 16, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request may be found at *www.reginfo.gov.*

International Affairs

OMB Number: 1505–0199.

Type of Review: Revision a currently approved collection.

Title: Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

Form: TIC Form D.

Abstract: Form D is required by law and is designed to collect timely information on International portfolio capital movements, including U.S. residents' holdings of, and transactions in, financial derivatives contracts with foreign residents. The information will be used in the computation of the U.S. balance of payments accounts and international investments position, as well as in the formulation of U.S. International financial and monetary policies.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 4,200.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–6305 Filed 3–14–12; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Registration of Mortgage Loan Originators.''

DATES: Comments must be received by May 14, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0243, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0243, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, or Ira L. Mills, OCC Clearance Officers, (202) 874–5090, or (202) 874–6055, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting extension of OMB approval for this collection. There have been no changes to the requirements of the regulations, however, they have been transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1990, July 21, 2010 (Dodd-Frank Act), and republished as CFPB regulations (76 FR 78483 (December 19, 2011)). The burden estimates have been revised to remove the burden for OCC-regulated institutions with over $10 billion in assets, now carried by CFPB pursuant to section 1025 of the Dodd-Frank Act, and to remove the initial start-up burden. The OCC retains enforcement authority for its institutions with $10 billion in assets or less.

Title: Registration of Mortgage Loan Originators.

OMB Number: 1557–0243.

Description: The S.A.F.E. Act requires an employee of a bank, savings association, or credit union and their subsidiaries regulated by a Federal banking agency or an employee of an institution regulated by the FCA (Agency-regulated institutions) who engages in the business of a residential mortgage loan originator (MLO) to register with the Nationwide Mortgage Licensing System and Registry (Registry) and obtain a unique identifier. Agency-regulated institutions must require their employees who act as residential MLOs to comply with the Act's requirements to register and obtain a unique identifier and also adopt and follow written policies and procedures to assure compliance with these requirements.

The Registry is intended to aggregate and improve the flow of information to and between regulators; provide increased accountability and tracking of mortgage loan originators; enhance consumer protections; reduce fraud in the residential mortgage loan origination process; and provide consumers with easily accessible information at no charge regarding the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

The Agencies jointly developed and maintain a system for registering MLOs employed by Agency-regulated institutions with the Registry. The Agencies, at a minimum, must furnish or cause to be furnished to the Registry information concerning the MLOs' identity, including: (1) Fingerprints for submission to the Federal Bureau of Investigation and any other relevant governmental agency for a State and national criminal background check; and (2) personal history and experience, including authorization for the Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

MLO Reporting Requirements

Unless the de minimis exception or a different implementation period applies, 12 CFR 1007.103(a) requires an employee of an institution who is engaged in the business of a MLO to register with the Registry, maintain such registration, and obtain a unique identifier. Under § 1007.103(b), an institution must require each such registration to be renewed annually and updated within 30 days of the occurrence of specified events. Section 1007.103(d) sets forth the categories of information that an employee, or the employing institution in the employee's behalf, must submit to the Registry, along with the employee's attestation as to the correctness of the information supplied, and an authorization to obtain further information.

MLO Disclosure Requirement

Section 1007.105(b) requires the MLO to provide the unique identifier to a consumer upon request.

Financial Institution Reporting Requirements

Section 1007.103(e) specifies the institution and employee information that an institution must submit to the Registry in connection with the initial registration of one or more MLOs, and thereafter update.

Financial Institution Disclosure Requirements

Section 1007.105(a) requires the institution to make the unique identifier of MLO employees available to consumers in a manner and method practicable to the institution.

Financial Institution Recordkeeping Requirements

- Section 1007.103(d)(1)(xii) requires the collection of MLO employee fingerprints.
- Section 1007.104 requires that an institution employing MLOs to:

○ Adopt and follow written policies and procedures, at a minimum addressing certain specified areas, but otherwise appropriate to the nature, size and complexity of their mortgage lending activities.

○ Establish reasonable procedures and tracking systems for monitoring registration compliance.

○ Establish a process for, and maintain records related to, employee criminal history background reports and actions taken with respect thereto.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 36,003.

Estimated Total Annual Burden: 31,053 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–6298 Filed 3–14–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2012 American Eagle Silver Proof Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2012 American Eagle Silver Proof Coin. The coins will be offered for sale at a price of $59.95.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: March 12, 2012.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2012–6294 Filed 3–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on March 26–27, 2012, at the St. Regis Hotel, 923 16th and K Streets NW., Washington, DC. The sessions will begin at 8:30 a.m. and end at 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments on the afternoon of March 27. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Mrs. Sarah Fusina, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420; or email at *Sarah.Fusina@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Fusina at (202) 461–9569.

Dated: March 9, 2012.

By Direction of the Secretary:

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–6209 Filed 3–14–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 51 March 15, 2012

Part II

Commodity Futures Trading Commission

17 CFR Part 43
Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades

AGENCY: Commodity Futures Trading Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing regulations to implement certain statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, in accordance with section 727 of the Dodd-Frank Act, the Commission is proposing regulations that would define the criteria for grouping swaps into separate swap categories and would establish methodologies for setting appropriate minimum block sizes for each swap category. In addition, the Commission is proposing further measures under the Commission's regulations to prevent the public disclosure of the identities, business transactions and market positions of swap market participants.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD08, by any of the following methods:

- The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

Commenters to this further notice of proposed rulemaking are requested to refrain from providing comments with respect to the provisions in part 43 of the Commission's regulations that are beyond the scope of this proposed rulemaking. The Commission only plans to address those comments that are responsive to the policies, merits and substance of the proposed provisions set forth in this further notice of proposed rulemaking.

Throughout this further notice of proposed rulemaking, the Commission requests comment in response to several specific questions. For convenience, the Commission has numbered each of these requests for comment. The Commission asks that, in submitting comments, commenters kindly identify the specific number of each request to which their comments are responsive.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Carl E. Kennedy, Counsel, Office of the General Counsel, 202–418–6625, *c_kennedy@cftc.gov;* or George Pullen, Economist, Division of Market Oversight, 202–418–6709, *gpullen@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

[1] *See* 17 CFR 145.9.

I. Background

A. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[2] Title VII of the Dodd-Frank Act [3] amended the Commodity Exchange Act (''CEA'') [4] to establish a comprehensive, new regulatory framework for swaps and security-based swaps. This legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, *inter alia:* (1) Providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing mandatory clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 727 of the Dodd-Frank Act created section 2(a)(13) of the CEA, which authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data.[5] Section 2(a)(13)(A) provides that the definition of ''real-time public reporting'' means reporting ''data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.'' [6] Section 2(a)(13)(B) states that the purpose of section 2(a)(13) is ''to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.''

In general, section 2(a)(13) of the CEA directs the Commission to prescribe regulations ''providing for the public availability of transaction and pricing data'' for certain swaps. Section 2(a)(13) also places two other statutory requirements on the Commission that are relevant to this further notice of proposed rulemaking (''Further Proposal''). First, sections 2(a)(13)(E)(ii) and (iii) of the CEA respectively require the Commission to prescribe regulations specifying ''the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts'' and ''the appropriate time delay for reporting

[2] *See* Public Law 111–203, 124 Stat. 1376 (2010).

[3] The short title of Title VII of the Dodd-Frank Act is the ''Wall Street Transparency and Accountability Act of 2010.''

[4] *See* 7 U.S.C. 1 *et seq.*

[5] *See generally* CEA section 2(a)(13), 7 U.S.C. 2(a)(13).

[6] CEA section 2(a)(13)(A).

large notional swap transactions (block trades) to the public.'' [7] In promulgating regulations under section 2(a)(13), section 2(a)(13)(E)(iv) directs the Commission to take into account whether public disclosure of swap transaction and pricing data will ''materially reduce market liquidity.'' [8]

The second statutory requirement relevant to this Further Proposal is found in sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA. Section 2(a)(13)(E)(i) requires the Commission to protect the identities of counterparties to mandatorily-cleared swaps, swaps excepted from the mandatory clearing requirement and voluntarily-cleared swaps. Section 2(a)(13)(C)(iii) of the CEA requires the Commission to prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap.[9] Indeed, Congress sought to ''ensure that the public reporting of swap transaction and pricing data [would] not disclose the names or identities of the parties to [swap] transactions.'' [10]

In carrying out these two statutory requirements under section 2(a)(13), the Commission issued a notice of proposed rulemaking. A discussion of that notice is described immediately below.

B. The Initial Proposal

On December 7, 2010, the Commission published in the **Federal Register** a notice of proposed rulemaking to implement section 2(a)(13) of the CEA (the ''Initial Proposal''), which included, among others, specific provisions pursuant to sections 2(a)(13)(E)(i)–(iv) and 2(a)(13)(C)(iii).[11] In the Initial Proposal, the Commission set out proposed provisions to satisfy the statutory requirements discussed above. With respect to the first statutory requirement, the Commission proposed: (1) Definitions for the terms ''large notional off-facility swap'' and ''block trade'' [12]; (2) a method for determining the appropriate minimum block sizes for large notional off-facility swaps and block trades; [13] and (3) a framework for timely reporting of such transactions and trades.[14] Proposed § 43.5(g) provided that registered swap data repositories (''SDRs'') shall be responsible for calculating the appropriate minimum block size for each ''swap instrument'' using the greater result of the distribution test [15] and the multiple test.[16] Proposed § 43.2(y) broadly defined ''swap instrument'' as ''a grouping of swaps in the same asset class with the same or similar characteristics.'' [17] Proposed § 43.5(h) provided that for any swap listed on a SEF or DCM, the SEF or DCM must set the appropriate minimum block trade size.[18]

With respect to the second statutory requirement relevant to this Further Proposal, the Initial Proposal set forth several provisions to address issues pertinent to protecting the identities of parties to a swap. Essentially, these proposed provisions sought to protect the identities of parties to a swap through the limited disclosure of information and data relevant to the swap. In particular, proposed § 43.4(e)(1) in the Initial Proposal provided that an SDR could not publicly report swap transaction and pricing data in a manner that discloses or otherwise facilitates the identification of a party to a swap. Proposed § 43.4(e)(2) would have placed a requirement on SEFs, DCMs and reporting parties to provide an SDR with a specific description of the underlying asset and tenor of a swap. This proposed section also included a qualification with respect to the reporting of the specific description. In particular, this section provided that ''[the] description must be general enough to provide anonymity but specific enough to provide for a meaningful understanding of the economic characteristics of the swap.'' [19] This qualification would have applied to all swaps.

In the Initial Proposal, the Commission acknowledged that swaps that are executed on or pursuant to the rules of a SEF or DCM do not raise the same level of concerns in protecting the identities, business transactions or market positions of swap counterparties since these swaps generally lack

[7] *See* CEA sections 2(a)(13)(E)(ii) and (iii). Section 2(a)(13)(E) explicitly refers to the swaps described only in sections 2(a)(13)(C)(i) and 2(a)(13)(C)(ii) of the CEA (*i.e.,* clearable swaps, including swaps that are exempt from clearing). As noted in the Commission's Initial Proposal (as defined below) and its Adopting Release (as defined below), the Commission interprets the provisions in section 2(a)(13)(E) to apply to all categories of swaps described in section 2(a)(13)(C) of the CEA.

[8] CEA section 2(a)(13)(E)(iv). Similarly, section 5h(f)(2)(C) of the CEA directs a registered swap execution facility (''SEF'') to set forth rules for block trades for swap execution purposes.

[9] This provision does not cover swaps that are ''determined to be required to be cleared but are not cleared.'' *See* CEA section 2(a)(13)(C)(iv).

[10] 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (Statement of Sen. Blanche Lincoln).

[11] *See* Real-Time Public Reporting of Swap Transaction Data, 75 FR 76,139, Dec. 7, 2010, as corrected in Real-Time Public Reporting of Swap Transaction Data Correction, 75 FR 76,930, Dec. 10, 2010. Interested persons are directed to the Initial Proposal for a full discussion of each of the proposed part 43 rules.

[12] The Initial Proposal defined the term ''large notional swap.'' *See* proposed § 43.2(l), 75 FR 76,171. The Adopting Release finalized the term as ''large notional off-facility swap,'' to denote, in relevant part, that the swap is not executed pursuant to a SEF or designated contract market's (''DCM'') rules and procedures. *See* § 43.2, 77 FR 1,182, 1,244, Jan. 9, 2012 (''Adopting Release''). Specifically, the Adopting Release defined the term as an ''off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations.'' *Id.* Throughout this Further Proposal, the Commission uses the term ''large notional off-facility swap'' as adopted in the Adopting Release.

The Initial Proposal's definition of ''block trade'' was similar to the final definition in the Adopting Release. *See* proposed § 43.2(f), 75 FR 76,171. The Adopting Release defines the term ''block trade'' as a publicly reportable swap transaction that: ''(1) [i]nvolves a swap that is listed on a SEF or DCM; (2) [o]ccurs away from the [SEF's or DCM's] trading system or platform and is executed pursuant to the [SEF's or DCM's] rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block applicable to such swap; and (4) [i]s reported subject to the rules and procedures of the [SEF or DCM] and the rules described in [part 43], including the appropriate time delay requirements set forth in § 43.5.'' *See* § 43.2, 77 FR 1,243.

[13] *See* proposed § 43.5, 75 FR 76,174–76.

[14] Proposed § 43.5(k)(1) in the Initial Proposal provided that the time delay for the public dissemination of data for a block trade or large notional off-facility swap shall commence at the time of execution of such trade or swap. *See* 75 FR 76,176. Proposed § 43.5(k)(2) provided that the time delay for standardized block trades and large notional off-facility swaps (*i.e.,* swaps that fall under CEA Section 2(a)(13)(C)(i) and (iv)) would be 15 minutes from the time of execution. *Id.* The Initial Proposal did not provide specific time delays for large notional off-facility swaps (*i.e.,* swaps that fall under Section 2(a)(13)(C)(ii) and (iii)). Instead, proposed § 43.5(k)(3) provided that the time delay for such swaps shall be reported subject to a time delay that may be prescribed by the Commission. *Id.*

The Adopting Release established time delays for the public dissemination of block trades and large notional off-facility swaps in § 43.5. *See* 77 FR 1,247–49.

[15] The distribution test, described in proposed § 43.5(g)(1)(i) of the Initial Proposal, required that an SDR take the rounded transaction sizes of all trades executed over a period of time for a particular swap instrument and create a distribution of those trades. An SDR would then determine the minimum threshold amount as an amount that is greater than 95 percent of the notional or principal transaction sizes for the swap instrument for an applicable period of time. *See* 75 FR 76,175.

[16] The multiple test, described in proposed § 43.5(g)(1)(ii) in the Initial Proposal, required that an SDR multiply the block trade multiple by the ''social size'' of a particular swap instrument. Proposed § 43.2(x) defined ''social size'' as the greatest of the mean, median or mode for a particular swap instrument. The Commission proposed a block trade multiple of five. *Id.*

[17] *See* proposed § 43.2(y), 75 FR 76,172. For the reasons described in section II.B. infra, the Commission is proposing to use the term ''swap category'' instead of ''swap instrument.'' The Commission is of the view that the term swap category is a more descriptive term to convey the concept of a grouping of swap contracts that would be subject to the same appropriate minimum block size.

[18] *See* 75 FR 76,176.

[19] See 75 FR 76,174.

customization.[20] As a result, the Commission provided that SEFs and DCMs should tailor the description required by proposed section 43.2(e) depending on the asset class and place of execution of each swap.

In contrast, the Commission acknowledged that the public dissemination of a description of the specific underlying asset and tenor of swaps that are not executed on or pursuant to the rules of a SEF or DCM (*i.e.,* swaps that are executed bilaterally) may result in the unintended disclosure of the identities, business transactions or market positions of swap counterparties, particularly for swaps in the other commodity asset class.[21] To address this issue, the Commission proposed in § 43.4(e)(2) that an SDR publicly disseminate a more general description of the specific underlying asset and tenor.[22] In the Initial Proposal, the Commission provided a hypothetical example of how an SDR could mask or otherwise protect the underlying asset from public disclosure in a manner too specific so as to divulge the identity of a swap counterparty. The Commission, however, did not set forth a specific manner in which SDRs should carry out this requirement.[23]

To further protect the identities, business transactions or market positions of swap counterparties, proposed § 43.4(i) of the Initial Proposal included a rounding convention for all swaps, which included a ''notional cap'' provision. The proposed notional cap provision provided, for example, that if the notional size of a swap is greater than $250 million, then an SDR only would publicly disseminate a notation of ''$250+'' to reflect the notional size of the swap.[24]

The Commission issued the Initial Proposal for public comment for a period of 60 days, but later reopened the comment period for an additional 45 days.[25] The comments that were submitted in response to the Initial Proposal are discussed in the section that follows.

C. Public Comments in Response to the Initial Proposal

After issuing the Initial Proposal, the Commission received 105 comment letters and held 40 meetings with interested parties regarding the proposed provisions.[26] The commenters provided general and specific comments relating to the proposed provisions regarding the determination of appropriate minimum block sizes and anonymity protections for the identities, business transactions and market positions of swap counterparties.[27] Subsection 1 below sets out a discussion of the comments submitted in response to the Initial Proposal regarding the provisions that pertain to the determination of appropriate minimum block sizes. Subsection 2 below sets out a discussion of the comments submitted in response to the Initial Proposal regarding the proposed provisions that provide anonymity protections for the identities, business transactions or market positions of swap counterparties. Subsection 3 below sets out a discussion of the comments submitted in response to the Initial Proposal regarding the implementation of proposed part 43.

1. Public Comments Regarding the Proposed Determination of Appropriate Minimum Block Sizes

In terms of general comments, many commenters argued that the potential effects of the large notional off-facility swap and block trade provisions (including the provisions regarding the appropriate time delay) would adversely affect market liquidity.[28] Several commenters generally argued that the Commission's proposed methodology was not supported by actual swap market data.[29] In support of these comments, a few commenters also argued that the Commission should examine swap markets over a sufficient period of time to obtain a comprehensive view of market liquidity.[30] Other commenters also contended that the proposed methodology to determine appropriate minimum block sizes would increase transaction costs if the appropriate minimum block sizes are set too large or if time delays are not long enough.[31]

Some commenters made specific recommendations regarding the Commission's proposed method for determining appropriate minimum block sizes for large notional off-facility swaps and block trades.[32] For example, four commenters proffered alternative methods in which to group or categorize swaps for the purposes of the appropriate minimum block size determination.[33] Ten commenters recommended ways to modify the multiple test.[34] Specifically, four commenters suggested that the Commission remove the mean from the calculation of social size.[35] Several of

[20] *See* 75 FR 76,151 (''In contrast, for those swaps that are executed on a swap market, the Commission believes that since such contracts will be listed on a particular trading platform or facility, it will be unlikely that a party to a swap could be inferred based on the reporting of the underlying asset and therefore parties to swaps executed on swap markets must report the specific underlying assets and tenor of the swap.'').

[21] *See* 75 FR 76,150–51.

[22] *See* 75 FR 76,174.

[23] *See* 75 FR 76,150. The Initial Proposal further provided that the requirement in proposed § 43.4(e)(2) was separate from the requirement that a reporting party report swap data to an SDR pursuant to section 2(a)(13)(G) of the CEA. See 75 FR 76,174.

[24] *See* 75 FR 76,152.

[25] The initial comment period for the Initial Proposal closed on February 7, 2011. The comment periods for most proposed rulemakings implementing the Dodd-Frank Act—including the proposed part 43 rules—subsequently were reopened for the period of April 27 through June 2, 2011.

[26] The interested parties who either submitted comment letters or met with Commission staff included end-users, potential swap dealers, asset managers, industry groups/associations, potential SDRs, a potential SEF, multiple law firms on behalf of their clients and a DCM. Of the 105 comment letters submitted in response to the Initial Proposal, 42 letters focused on various issues relating to block trades and large notional off-facility swaps. Of the 40 meetings, five meetings focused on various issues relating to block trades and large notional off-facility swaps. All comment letters received in response to the Initial Proposal may be found on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=919.*

[27] A list of the full names and abbreviations of commenters who responded to the Initial Proposal and who the Commission refers to in this Further Proposal is included in section VI below. As noted above, letters from these commenters and others submitted in response to the Initial Proposal are available through the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=919.*

[28] *See, e.g.,* Freddie Mac CL at 2; ICI CL at 2; ABC/CIEBA CL at 1–2; ISDA/SIFMA CL at 2–4; Cleary Gottlieb CL at 6; JP Morgan CL at 2; WMBAA CL at 3.

[29] *See, e.g.,* Cleary Gottlieb CL at 4–5; SIFMA/AFME/ASIFMA CL at 12; AII CL at 3–5. In their joint comment letter, for example, ISDA and SIFMA urged the Commission to conduct an empirical study on the impact of post-trade transparency on the over-the-counter (''OTC'') markets prior to finalizing the rulemaking. *See* ISDA/SIFMA CL at 4–5. In addition, ISDA and SIFMA argued that the Commission should conduct a three-month study, during which time the Commission should prescribe interim block trade rules. *Id.*

[30] Commenters did not agree on what constitutes a sufficient period of time to obtain a comprehensive view of liquidity. *See, e.g.,* ISDA/SIFMA CL at 4 (three months); *but see* AII CL at 4 (one year); ABC/CIEBA CL at 5–6 (at least one year); UBS (six month consultation period).

[31] *See, e.g.,* UBS CL at 1; AII CL at 4; SIFMA/AFME/ASIFMA CL at 11–13; BlackRock CL at 3–4; Hunton & Williams CL at 20; Cleary Gottlieb CL at 4–6; CCMR CL at 4; Coalition of Derivatives End-Users CL at 4–7; MFA CL at 3–4; MetLife CL at 2–3.

[32] *See, e.g.,* BlackRock CL at attachment 3; Coalition of Derivatives End-Users CL at 2–4.

[33] *See, e.g.,* UBS CL at 1; Coalition of Derivatives End-Users CL at 2–4; Cleary Gottlieb CL at 5–6; SIFMA AMG CL at 5; Goldman CL at 3–4; ICI CL at 3.

[34] *See e.g.,* JP Morgan CL at 9; BlackRock CL at 4; Goldman CL at 5.

[35] *See, e.g.,* Goldman CL at 5 (''[W]e encourage the [Commission] to modify the multiple test by eliminating the mean prong. Defining the social size of a swap category with reference to the mean of transaction sizes would make the calculation susceptible to skewing * * *.''). *See also* JPM CL

Continued

these commenters also suggested that the Commission use a multiple of less than five, with a multiple of two as the most often suggested alternative.[36]

Ten commenters also recommended that the Commission alter the distribution test in a way that they would support it as a test, which should be used individually or used in combination with the multiple test.[37] The majority of these commenters suggested that the Commission use a lower percentage than the proposed 95th percentile.[38] Specifically, these commenters suggested a percentile between the 50th and 80th percentile.[39]

A few commenters focused their recommendations on the methodologies that an SDR would use to calculate the appropriate minimum block sizes for specific asset classes. For example, three commenters made specific recommendations regarding the calculation and criteria of large notional off-facility swaps and block trades in the interest rate swap market.[40] A third commenter made specific recommendations regarding the calculation and criteria of large notional off-facility swaps and block trades in the credit default swap market.[41]

One commenter shared its view regarding whether the block trade rules that are applied in the futures markets are an appropriate analogy for determining appropriate minimum block sizes in related swaps markets. In its comment letter to the Initial Proposal, this commenter argued that the appropriate minimum block sizes in place for the futures market should be used as a comparison for determining appropriate minimum block sizes in the swaps market.[42] The commenter stated that where an economically-equivalent futures contract is listed on a DCM, then the rules establishing appropriate minimum block sizes for a swap should be comparable to such futures contracts.[43] The commenter also suggested that the Commission use comparable futures contracts in determining, inter alia, appropriate minimum block sizes and reporting and recordkeeping requirements.[44] The commenter warned otherwise that, if the Commission was to adopt a different approach, then such action would unintentionally ''[tilt] the playing field in favor of one class of instruments.'' [45] The commenter further argued that this consequence would not be consistent with Congress's intent when it enacted the Dodd-Frank Act.

In contrast, other commenters suggested that the appropriate minimum block sizes in place for futures contracts would be an inappropriate comparative measure for the swaps market.[46] Some of these commenters, for example, argued that the futures market is not an appropriate basis for setting appropriate minimum block sizes for block trades and large notional off-facility swaps because the swap market is significantly different than the futures market.[47]

Many commenters to the Initial Proposal contended that the Commission should determine appropriate minimum block sizes based on the liquidity of a ''swap instrument.'' [48] Two commenters suggested that markets with differing levels of liquidity should be subject to different block size methodologies.[49] Another commenter suggested that a volume of less than five transactions per day be used to classify certain swap categories as illiquid and therefore subject to lower relative block size thresholds.[50] Yet another commenter suggested utilizing a benchmark volume level to classify swaps within an asset class for the purpose of determining appropriate block sizes.[51] One commenter suggested considering the turnover in a market to determine appropriate block sizes and time delays.[52] Finally, another commenter recommended that the Commission review historical swap transaction data and consult with market participants in determining a liquidity spectrum for each swap category, with liquidity determined based on the average number of transactions per day (based on true risk transfer) over the preceding six months and the number of market makers regularly trading the instrument.[53]

2. Public Comments Regarding the Proposed Anonymity Protections

Several commenters expressed concerns that the Initial Proposal did not address possible disclosure of the identities, business transactions and market positions of swap counterparties.[54] Many commenters stated that the failure to adequately protect the identities and business transactions of the counterparties in connection with transacting block trades or large notional off-facility swaps would result in harm to the market.[55] These commenters argued that the proposal would increase the risk that sophisticated market participants or some counterparties would be able to detect either the asset being offset or the identity of the end-user doing the offsetting, notwithstanding the anonymity protections proposed in the Initial Proposal.[56] According to these commenters, this issue is of particular concern when a swap market participant enters into multiple swap transactions to place a large offsetting position and some or all of those transactions involve thinly-traded products or illiquid markets.[57] Under

at 8, UBS CL at 2, Federal National Mortgage Association CL at 2.

[36] *See, e.g.,* UBS CL at 2 (multiple of 2); JP Morgan CL at 9 (multiple of 2). *But see* MetLife CL at 5 (multiple of 1.5).

[37] *See e.g.,* PIMCO CL at 4; SIFMA AMG CL at 4; UBS CL at 2.

[38] *See, e.g.,* BlackRock CL at 4; SIFMA AMG CL at 5; Vanguard CL at 5 . *See also* UBS CL at 2.

[39] *See, e.g.,* BlackRock CL at 4 (use 75th percentile); SIFMA AMG CL at 5 (recommending ''somewhere in the range of the 66th to 80th percentiles''); Vanguard CL at 5 (80th percentile); JP Morgan CL at 9 (50th percentile). *See also* UBS CL at 2.

[40] *See* PIMCO CL at 3 (for interest rate swaps, ''$250 million for swaps of 0–2 years, $200 million for swaps of 2–5 years, $100 million for swaps of 6–10 years, $75 million for swaps of 11–20 years, and $50 million for swaps over 20 years.''); AII CL at 5 (''For interest rate swaps 0–5 year interest rate swaps, it may be appropriate to set the limit at approximately $100 million. For 5–10 year interest rate swaps, the threshold might be approximately $50 million and for 10–30 year interest rate swaps, the appropriate threshold could be approximately $25 million.''); BlackRock CL at attachment 3 (for interest rate swaps, ''$300K DV01 (approximately $350 million 10 year equivalent)'').

[41] *See* BlackRock CL at attachment 3. *See also* SIFMA/AFME/ASIFMA CL at 12 (recommending criteria for swaps and other instruments in the FX asset class).

[42] *See* CME CL at 12.

[43] *See id.*

[44] *See id.*

[45] *Id.* at 13.

[46] *See, e.g.,* Freddie Mac CL at 2; Barclays CL at 2; ICI CL at 2–3; ISDA/SIFMA CL at 3–4; Vanguard CL at 4; TriOptima CL at 5; CCMR CL at 3.

[47] *See* ISDA/SIFMA CL at 3–4; Vanguard CL at 4; TriOptima CL at 5; Freddie Mac CL at 2; Barclays CL at 2; ICI CL at 2–3; CCMR CL at 3.

[48] *See* note 17 supra for the Commission's proposal to use the term ''swap category'' instead of ''swap instrument.''

[49] *See* ISDA/SIFMA CL at 4; Coalition of Derivatives End-Users CL at 4.

[50] *See* Morgan Stanley CL at 11.

[51] *See* Vanguard CL at 5.

[52] *See* TriOptima CL at 5.

[53] *See* UBS CL at 2.

[54] *See e.g.,* Sutherland CL at 4–5; PIMCO CL at 3; Cleary Gottlieb CL at 5; Bracewell & Giuliani CL at 2–7; DTCC CL at 12; FINRA CL at 5; Dominion CL at 6–9; Commission staff meeting with Argus Media, Inc. on Feb. 3, 2011. *See also* ISDA and SIFMA, Block trade reporting over-the-counter derivatives markets, 6 (Jan. 2011), available at *http://www.isda.org/speeches/pdf/Block-Trade-Reporting.pdf.*

[55] *See, e.g.,* Dominion CL at 5–6; PIMCO CL at 3; ABC/CEIBA CL at 16; WMBAA CL at 10; MFA CL at 2–3; Coalition for Derivatives End-Users CL at 10; Sutherland CL at 5; Argus CL at 3–4; ATA CL at 5; Sadis Goldberg CL at 2–4.

[56] *See, e.g.,* Sutherland CL at 5; Coalition for Derivatives End-Users CL at 10; ATA CL at 5.

[57] *See, e.g.,* Argus CL at 3–4 (''In situations where only a few entities trade a certain type of underlying asset, real-time reporting may inadvertently reveal the identity of the swap participants, particularly where the underlying

those circumstances, the commenters asserted that the parties to a swap would face an increased risk that their identities or transactions would be revealed to the public in violation of sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iv) of the CEA.[58] The commenters concluded that, as a result, swap counterparties could experience difficulty in offsetting their positions at a competitive price.[59]

To address concerns regarding limited disclosure, several commenters recommended that the Commission establish a ''masking rule.'' [60] For example, one commenter suggested that the Commission set masking thresholds at or near the level that represents the dividing line between retail and institutional trades.[61] Another commenter suggested that the Commission develop a masking rule for the swaps market that is similar to the one established by the Financial Industry Regulatory Authority (''FINRA'') for the bond market.[62] These commenters suggested, however, that the Commission establish alternative methodologies to ensure limited public disclosure of swap transaction and pricing data.[63]

Some commenters expressed general concerns regarding anonymity as well as specific concerns with respect to swaps in the other commodity asset class. One commenter provided specific examples of how the identities of the counterparties could be revealed by publicly disseminating information relating to energy products.[64] Another commenter suggested the use of broad geographic regions when publicly disseminating data for commodity swaps with very specific underlying assets or delivery points (*e.g.,* natural gas) in order to protect the anonymity of the parties to these swaps.[65] In commenting on the hypothetical example provided in the Initial Proposal,[66] the commenter suggested that instead of reporting Lake Charles, Louisiana as the delivery point, an SDR could publicly disseminate ''Louisiana'' or ''Gulf Coast.'' [67]

Six commenters argued that the proposed anonymity provisions are not sufficient for certain swaps or certain markets (*e.g.,* large, bespoke trades offsetting energy assets; illiquid contracts entered into by non-financial end-users; etc.). These commenters further argued that the public dissemination requirement in the Initial Proposal may result in undue harm to the swap market by increasing the risk of public disclosure of the identities, business transactions and market positions of swap counterparties.[68]

3. Public Comments Regarding Implementation

In the Initial Proposal, the Commission solicited comments in response to specific questions regarding the implementation of real-time public reporting, including, inter alia, the timetable in which the Commission would require the public dissemination of swap transaction and pricing data for block trades and large notional off-facility swaps. In response to the Initial Proposal, several commenters suggested that the Commission phase-in the block trade thresholds and time delays, starting with lower thresholds and longer time delays.[69] These commenters further suggested that the Commission phase-in stricter methodologies and time delays over time.[70] For example, one commenter stated in its comment letter that the Commission should specify appropriate minimum block sizes in advance and readjust those sizes over time in order to provide certainty to the market.[71] In contrast, another commenter argued that the Commission should use data that is currently available to set appropriate minimum block sizes without any delay.[72]

Following the close of the comment period, the Commission took several actions in consideration of the comments received regarding the proposed methodology to determine appropriate minimum block sizes, the proposed anonymity protections and the proposed implementation approach.[73] A discussion of the Commission's actions and their impact on this Further Proposal is set out immediately below.

D. Analysis of Swap Market Data; Issuance of the Adopting Release

In consideration of the public comments submitted in response to the Initial Proposal, the Commission obtained and analyzed swap data in order to better understand the trading activity of swaps in certain asset classes.[74] The Commission also reviewed additional information, including a recent study pertaining to the mandatory execution requirements and post-trade transparency concerns that arose out of two of the Commission's proposed rulemakings,[75] as well as a report issued by two industry trade associations on block trade reporting in the swaps market.[76] In addition, the Commission and the Securities and Exchange Commission, held a two-day public roundtable on Dodd-Frank Act implementation on May 2 and 3, 2011 (''Public Roundtable'').[77] During the Public Roundtable and in comment letters submitted in support thereof, interested parties recommended that the Commission adopt a phased-in approach with respect to the establishment of block trade rules.

Recently, the Commission issued the Adopting Release that finalized several provisions that were proposed in the Initial Proposal.[78] Those provisions,

asset is a commodity.''); *see also* Dominion CL at 5–6; Sutherland CL at 5; Coalition for Derivatives End-Users CL at 10.

[58] *See, e.g.,* Argus CL at 3–4; ATA CL at 5; Dominion CL at 5–6; Sadis Goldberg CL at 2–4.

[59] *Id. See* note 58 *supra.*

[60] JP Morgan CL at 12–14 (''The masking rule is similar in concept to the so-called '5+ rule' in TRACE. Under TRACE, transactions involving bonds in excess of $5 [m]illion are reported as '5+' * * *.''); *see also* WMBAA CL at 10; ABC/CIEBA CL at 8–9.

[61] *See* JP Morgan CL at 12–13.

[62] *See* WMBAA CL at 10.

[63] *See, e.g.,* ABC/CIEBA CL at 9 (''We ask the Commission adopt a rule * * * which will require that the volume of those swaps which are not block trades be disseminated in the form of ranges.'').

[64] *See* MS CL at 3.

[65] *See* Argus CL at 1–3.

[66] *See* 75 FR 76,150–76,151.

[67] *See* Argus CL at 1–3.

[68] *See* Argus CL at 1–3; Coalition for Derivatives End-Users CL at 8–9; Dominion CL at 6–9; Cleary Gottlieb CL at 5; MS CL at 3; Bracewell & Giuliani CL at 2–7. *See also* Commission staff meeting with NFPEEU, June 11, 2011.

[69] *See, e.g.,* Barclays Capital CL at 5; World Federation of Exchanges CL at 2; ISDA/SIFMA CL at 11–12; and Cleary Gottlieb CL at 18–19.

[70] *See, e.g.,* Freddie Mac CL at 2–3; Barclays Capital CL at 5.

[71] *See* CCMR CL at 2–4. *Accord* Freddie Mac CL at 2–3 (''As the Commission collects data about the liquidity of the swaps market and the effects of the Commission's reporting rules, it may be appropriate to revisit the initial parameters for block trade reporting in order to further increase transparency.'').

[72] *See* SDMA CL at 3.

[73] Commission staff also consulted with the staffs of several other federal financial regulators in connection with the issuance of this Further Proposal.

[74] A detailed discussion of the Commission staff's review and analysis process is set out below in section II.B.1.a. of this Further Proposal.

[75] *See* ISDA, Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products, 24 (ISDA Discussion Paper No. 2, Nov. 2011), available at *http://www2.isda.org/attachment/Mzc0NA==/ISDA%20Mandatory%20Electronic%20Execution%20Discussion%20Paper.pdf.* This paper cited the Commission's notice of proposed rulemaking with respect to SEFs (Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1,214, 1,220, Jan. 7, 2011) and the Initial Proposal.

[76] *See* Block trade reporting for over-the-counter derivatives markets, note 54 supra.

[77] *See* Joint Public Roundtable on Issues Related to the Schedule for Implementing Final Rules for Swaps and Security-Based Swaps Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 23,211, Apr. 26, 2011. A copy of the transcript is accessible at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf.*

[78] *See* 77 FR 1,182.

once effective, will implement, among other things: (1) Several definitions proposed in the Initial Proposal relevant to this Further Proposal [79]; (2) the scope of part 43; (3) the reporting responsibilities of the parties to each swap; (4) the requirement that SDRs publicly disseminate swap transaction and pricing data; (5) the data fields that SDRs will publicly disseminate; (6) the time-stamping and recordkeeping requirements of SDRs, SEFs, DCMs and the ''reporting party'' to each swap [80]; (7) the interim time delays for public dissemination and the time delays for public dissemination of large notional off-facility swaps and block trades; and (8) interim notional cap sizes for all swaps that are publicly disseminated.[81]

Based on the public comments received in response to the Initial Proposal, and in order to successfully implement the real-time public reporting regulatory framework established in the Adopting Release, the Commission has decided to further propose provisions that: (1) Specify the criteria for determining swap categories and methodologies for determining the appropriate minimum block sizes for large notional off-facility swaps and block trades; and (2) provide increased protections to the identities of swap counterparties to large swap transactions and certain other commodity swaps, which were not fully addressed in the Adopting Release.[82]

In section II of this Further Proposal, the Commission sets out its proposal with respect to the criteria for determining swap categories and the methodologies for determining appropriate minimum block sizes for block trades and large notional off-facility swaps. In section III of this Further Proposal, the Commission sets out its proposal with respect to methodologies that provide anonymity to the swap counterparties to large swap transactions and certain other commodity swaps.

II. Further Proposal—Block Trades

A. Policy Goals

In section 2(a)(13) of the CEA, Congress intended that the Commission consider both the benefits of enhanced market transparency and the effects such transparency would have on market liquidity.[83] The Commission anticipates that the public dissemination of swap transaction and pricing data will generally reduce costs associated with price discovery and prevent information asymmetries between market makers and end users.[84] The Commission is of the view that the benefits of enhanced market transparency are not boundless, particularly in swap markets with limited liquidity. As noted above, section 2(a)(13)(E)(iv) of the CEA places constraints on the requirements for the real-time public reporting of swap transaction and pricing data. Specifically, this section provides that the Commission shall ''take into account whether the public disclosure [of swap transaction and pricing data] will materially reduce market liquidity.'' [85]

The Commission believes that the publication of detailed information regarding ''outsize swap transactions'' [86] could expose swap counterparties to higher trading costs.[87] In this regard, the publication of detailed information about an outsize swap transaction may alert the market to the possibility that the original liquidity provider to the outsize swap transaction will be re-entering the market to offset that transaction.[88] Other market participants might be alerted to the liquidity provider's need to offset risk and therefore would have a strong incentive to exact a premium from the liquidity provider. As a result, liquidity providers possibly could be deterred from becoming counterparties to outsize swap transactions if swap transaction and pricing data is publicly disseminated before liquidity providers can offset their positions. The Commission anticipates that, in turn, this result could negatively affect market liquidity in the swaps market. In consideration of these potential outcomes, this Further Proposal seeks to provide maximum transparency while taking into account reductions in market liquidity through more detailed criteria to establish: (1) Swap categories (relative to the definition of swap instrument in the Initial Proposal); and (2) a phased-in approach to determining appropriate minimum block sizes for block trades and large notional off-facility swaps. A summary of the Commission's proposed approach is described below.

B. Summary of the Proposed Approach

The Commission is proposing a two-period, phased-in approach to implement of regulations for determining appropriate minimum block sizes.[89] That is, the Commission is

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[79] The Adopting Release includes final definitions for the following terms: (1) Block trade; (2) large notional off-facility swap; (3) appropriate minimum block size; and (4) asset class. As noted above, the Adopting Release did not define the term swap instrument. This Further Proposal puts forth a new term swap category, which groups swaps for the purpose of determining whether a swap transaction qualifies as a large notional off-facility swap or block trade. *See* note 17 *supra.*

[80] *See* § 43.2 of the Commission's regulations. 77 FR 1,244. The Adopting Release finalized the definition of ''reporting party'' as a ''party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part [43] and section 2(a)(13)(F) of the [CEA].'' 77 FR 1,244.

[81] *See* 77 FR 1,244.

[82] In several places in the Adopting Release, the Commission stated that it plans to address these requirements in a separate, forthcoming release. *See, e.g.,* 77 FR 1,185, 1,191, 1,193 and 1,217. This Further Proposal is that release.

Commenters to this Further Proposal are requested to refrain from providing comments with respect to the provisions adopted in the Adopting Release. Those provisions are not the subject of this Further Proposal. The Commission will not address the policy merits or substance of those provisions in its final rulemaking to this Further Proposal.

[83] In considering the benefits and effects of enhanced market transparency, the Commission notes that the ''guiding principle in setting appropriate block trade levels [is that] the vast majority of swap transactions should be exposed to the public market through exchange trading.'' Congressional Record—Senate, S5902, S5922 (July 15, 2010).

[84] *See e.g.,* CEA section 2(a)(13)(B) (''The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'').

[85] CEA section 2(a)(13)(E)(iv). *See also* CEA section 5h(f)(2)(C) (concerning the treatment of block trades for execution purposes).

[86] As used in this Further Proposal, an ''outsize swap transaction'' is a transaction that, as a function of its size and the depth of the liquidity of the relevant market (and equivalent markets), leaves one or both parties to such transaction unlikely to transact at a competitive price.

[87] The Commission's proposed SEF rulemaking, would require pre-trade transparency for swap transactions that: (1) Are subject to the mandatory clearing requirement; (2) involves a swap that a SEF makes available to trade; and (3) are not block trades. *See* proposed § 37.9(a)(2)(v), 76 FR 1,220. This Further Proposal also would require SEFs to utilize the Commission's rules for block trades (*i.e.,* the subject matter of this Further Proposal) in determining the trading procedures that apply to swap transactions. Therefore, swap transactions exceeding an appropriate minimum block size would therefore be exempt from the mandatory trading requirements.

[88] The price of such a transaction would reflect market conditions for the underlying commodity or reference index and the liquidity premium for executing the swap transaction. The time delays in part 43 of the Commission's regulations will protect end-users and liquidity providers from the expected price impact of the disclosure of publicly reportable swap transactions. Trading that exploits the need of traders to reduce or offset their positions has been defined in financial economics literature as ''predatory trading.'' *See e.g.,* Markus Brunnermeier and Lasse Heje Pedersen, Predatory Trading, Journal of Finance LX 4, Aug. 2005, available at *http://pages.stern.nyu.edu/~lpederse/papers/predatory_trading.pdf.*

[89] The Commission is proposing the same phased-in approach for determining cap sizes. For a more detailed discussion of the Commission's proposed approach with respect to cap sizes, *see* section III of this Further Proposal infra.

The two-period, phased-in approach would become effective after the implementation of the part 43 provisions in the Adopting Release. Until the date on which the proposed provisions in this Further Proposal become effective, all swaps would be subject to a time delay pursuant to the provisions in part 43.

proposing to phase-in its regulations during an initial period and thereafter on an ongoing basis (*i.e.,* the post-initial period) so that market participants can better adjust their swap trading strategies to manage risk, secure new technologies and make necessary arrangements in order to comply with part 43. The Commission is proposing two provisions relating to the Commission's determination of appropriate minimum block sizes: (1) Initial appropriate minimum block sizes under proposed § 43.6(e); and (2) post-initial appropriate minimum block sizes under proposed § 43.6(f).

In proposed § 43.6(e), the Commission is establishing initial appropriate minimum block sizes for each category of swaps within the interest rate, credit, foreign exchange (''FX'') and other commodity asset classes.[90] The Commission has listed the prescribed initial appropriate minimum block sizes in proposed appendix F to part 43 based on these swap categories.[91] For interest rate and credit swaps, the Commission reviewed actual market data and has prescribed initial appropriate minimum block sizes for swap categories in these asset classes based on that data. For the other asset classes, the Commission did not have access to relevant market data. As such, during the initial period, the Commission is proposing to use a methodology based on whether a swap or swap category is ''economically related'' to a futures contract.[92] Swaps and swap categories that are not economically related to a futures contract would remain subject to a time delay (*i.e.,* treated as block trades or large notional off-facility swaps, as applicable, regardless of notional amount). All initial appropriate minimum block sizes in proposed appendix F to part 43 would become effective 60 days following the publication in the **Federal Register** of a final rule adopting the provisions set forth in this Further Proposal.

In proposed § 43.6(f)(1), the Commission provides that the duration of this initial period would be no less than one year after an SDR has collected reliable data for a particular asset class as determined by the Commission. During the initial period, the Commission would review reliable data for each asset class. For the purposes of this proposed provision, reliable data would include all data collected by an SDR for each asset class in accordance with the compliance chart in the adopting release to part 45 of the Commission's regulations.[93] The proposed initial period would expire following the publication of a Commission determination of post-initial appropriate minimum block sizes in accordance with the publication process set forth in proposed §§ 43.6(f)(3) and (4). Thereafter, the Commission would set post-initial appropriate minimum block sizes for swap categories no less than once each calendar year using the calculation methodology set forth in proposed § 43.6(c)(1).[94]

The Commission is also proposing special rules for determining appropriate minimum block sizes in certain instances. In particular, in proposed § 43.6(d), the Commission prescribes special rules for swaps in the equity asset class. In proposed § 43.6(h), the Commission is establishing special rules for determining appropriate minimum block sizes in certain circumstances including, for example, rules for converting currencies and rules for determining whether a swap with optionality qualifies for block trade or large notional off-facility swap treatment.

Section C below describes the Commission's proposed approach to establish swap categories across the five asset classes. A discussion of the Commission's proposed methodologies to determine appropriate minimum block sizes follows in section D.

C. Proposing Criteria for Distinguishing Among Swap Categories in Each Asset Class

The Commission is proposing to use the term ''swap category'' to convey the concept of a grouping of swap contracts that would be subject to a common appropriate minimum block size.[95] Specifically, the Commission is proposing specific criteria for defining swap categories in each asset class. These proposed criteria are intended to address the following two policy objectives: (1) Categorizing together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size; and (2) minimizing the number of the swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[96] In the Commission's view, balancing these policy objectives and considering the characteristics of different types of swaps within an asset class are necessary in establishing appropriate criteria for determining swap categories within each asset class. The five asset classes established by the Commission in the Adopting Release are discussed briefly in the paragraph below, followed by a discussion of the proposed swap category criteria for each asset class.

Section 43.2 of the Commission's regulations currently defines ''asset class'' as ''a broad category of commodities, including without limitation, any 'excluded commodity' as defined in section 1a(19) of the [CEA], with common characteristics underlying a swap.'' [97] Section 43.2 also identifies the following five swap asset classes: interest rates; [98] equity; credit; FX; [99] and other commodities.[100]

In this Further Proposal, the Commission is proposing to breakdown each asset class further into separate swap categories for the purpose of determining appropriate minimum block sizes for such categories. During the initial and post-initial periods, the Commission would group swaps in the five asset classes into the prescribed swap categories as set forth in proposed § 43.6(b). In the subsections that follow, the Commission discusses in detail the proposed criteria for further delineating groups of swaps in the interest rate, credit, equity, FX, and other commodity

[90] The Commission is proposing that swaps in the equity asset class do not qualify as block trades and large notional off-facility swaps. *See* proposed § 43.6(d). Otherwise, the Commission is prescribing swap categories for each asset class as set forth in proposed § 43.6(b). These swap categories would remain the same during the initial and post-initial periods.

[91] The Commission notes SEFs and DCMs would not be prohibited under this Further Proposal from setting block sizes for swaps at levels that are higher than the appropriate minimum block sizes as determined by the Commission.

[92] A discussion of the term ''economically related'' is set forth below in section II.C.4 of this Further Proposal.

[93] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2,136, 2,196, Jan. 13, 2012. The Commission is currently of the view, however, that data is per se reliable if it is collected by an SDR for an asset class after the respective compliance date for such asset class as set forth in part 45 of the Commission's regulations.

[94] In particular, the Commission is proposing a 67-percent notional amount calculation, which is discussed in more detail infra in section II.D.1 of this Further Proposal.

[95] Proposed § 43.6(b) does not set out a definition for the term ''swap category.'' Instead, proposed § 43.6(b) sets out the provisions that group swaps within each asset class with common risk and liquidity profiles, as determined by the Commission.

[96] These objectives are specific to the determination of appropriate swap category criteria and are intended to promote the general policy goals described above in section II.A.of this Further Proposal.

[97] *See* § 43.2, 77 FR 1,243.

[98] In the Adopting Release, the Commission determined that cross-currency swaps are a part of the interest rate asset class. *See* 77 FR 1,193. The Commission noted that this determination is consistent with industry practice. *See id.*

asset classes into separate swap categories.

Request for Comment

Q1. Should the Commission provide for special swap categories and appropriate minimum block size methodologies for bilateral versus cleared swap transactions? If so, why?

1. Interest Rate and Credit Asset Classes

a. Background

The Commission was able to obtain and review non-public swap data to make inferences about patterns of trading activity, price impact and liquidity in the market for swaps in the interest rate and credit asset classes. Based on that review, the Commission is proposing criteria for determining swap categories in these two asset classes. Specifically, the Commission is proposing to define swap categories for: (1) Interest rate swaps based on unique combinations of tenor [101] and currency; and (2) credit default swaps (''CDS'') based on unique combinations of tenor and conventional spreads.[102]

The Commission obtained transaction-level data for these asset classes from two third-party service providers with the assistance of the Over-the-Counter Derivatives Supervisors Group (''ODSG'').[103] The ODSG was established in 2005 and is chaired by the Federal Reserve Bank of New York. The ODSG is comprised of domestic and international supervisors of representatives from major OTC derivatives market participants.[104] In particular, the ODSG coordinated with the ''G–14 banks'' in order to gain written permission to access the non-public swap data.[105]

MarkitSERV, a post-trade processing company jointly owned by Markit and The Depository Trust & Clearing Corporation (''DTCC''), provided the interest rate swap data set. The interest rate swap data set covered transactions confirmed on the MarkitWire platform between June 1, 2010 and August 31, 2010 where at least one party was a G–14 Bank.[106]

The Warehouse Trust Company LLC (''The Warehouse Trust'') provided the CDS data set.[107] The CDS data set covered CDS transactions for a three-month period beginning on May 1, 2010 and ending on July 31, 2010.[108]

b. The Commission filtered both data sets in order to analyze only transaction-level data corresponding to ''publicly reportable swap transactions,'' as defined in § 43.2 of the Adopting Release.[109] As such, the Commission excluded from its analysis duplicate and non-price forming transactions.[110] The

[99] To the extent that FX swaps or forwards, or both, are excluded from the definition of ''swap'' pursuant to a determination by United States Department of the Treasury (''Treasury''), the requirements of section 2(a)(13) of the CEA would not apply to those transactions, and such transactions would not be subject to part 43 of the Commission's regulations. Treasury issued a proposed determination on April 29, 2011, in which it stated that FX swaps and forwards would be excluded from the definition of ''swap,'' and thereby exempt from certain requirements established in the Dodd-Frank Act, including registration and clearing. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 76 FR 25,774, May 5, 2011. Treasury's proposed determination may also be found at *http://www.treasury.gov/initiatives/wsr/Documents/FX%20Swaps%20and%20Forwards%20NPD.pdf.*

The CEA provides, however, that, even if Treasury determines that FX swaps and forwards may be excluded from the definition of ''swap'', these transactions still are not excluded from regulatory reporting requirements to an SDR. Nonetheless, as stated, such transactions would not be subject to part 43 of the Commission's regulations. *See* 77 FR 1,188. Treasury has proposed to act pursuant to the authority in section 721 of the Dodd-Frank Act that permits a determination that certain FX swaps and forwards should not be regulated as swaps and are not structured to evade the Dodd-Frank Act. The Commission has noted that, as proposed, Treasury's determination would exclude FX swaps and forwards, as defined in CEA section 1a, but would not apply to FX options or non-deliverable forwards. FX instruments that are not covered by Treasury's final determination would still be subject to part 43 of the Commission's regulations.

[100] The Adopting Release defines the term ''other commodity'' to mean any commodity that is not categorized in the other asset classes as may be determined by the Commission. *See* 77 FR 1,244. The definition of asset class in § 43.2 also provides that the Commission may later determine that there are other asset classes not identified currently in that section. *See* 77 FR 1,243.

[101] As used in the Further Proposal, the tenor of a swap refers to the amount of time from the effective or start date of a swap to the end date of such swap. In circumstances where the effective or start date of the swap was different from the trade date of the swap, the Commission used the later occurring of the two dates to determine tenor.

[102] As generally used in the industry, the term ''conventional spread'' represents the equivalent of a swap dealer's quoted spread (*i.e.,* an upfront fee based on a fixed coupon and using standard assumptions such as auctions and recovery rates. More information regarding the use of this term can be found at Markit, The CDS Big Bang: Understanding the Changes to the Global CDS Contract and North American Conventions, at *http://www.markit.com/cds/announcements/resource/cds_big_bang.pdf,* (Mar. 2009), at 19.

[103] Section 8(a) of the CEA protects non-public, transaction-level data from public disclosure. Section 8(a)(1) provides, in relevant part, that ''the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers * * *.'' To assist commenters, this Further Release includes various tables and summary statistics depicting the ODSG data in aggregate forms. In the discussion that follows, the Commission additionally has described the methodology it employed in reviewing, analyzing and drawing conclusions based on the ODSG data.

[104] *See* OTC Derivatives Supervisors Group—Federal Reserve Bank of New York, *http://www.ny.frb.org/markets/otc_derivatives_supervisors_group.html (last visited Jan. 15, 2012).* The ODSG was formed ''in order to address the emerging risks of inadequate infrastructure for the rapidly growing market in the credit derivatives * * *.'' The ODSG works directly with market participants to plan, monitor and coordinate industry progress toward collective commitments made by firms.

[105] The G–14 banks are: Bank of America-Merrill Lynch; Barclays Capital; BNP Paribas; Citigroup; Credit Suisse; Deutsche Bank AG; Goldman Sachs & Co.; HSBC Group; J.P. Morgan; Morgan Stanley; The Royal Bank of Scotland Group; Societe Generale; UBS AG; and Wells Fargo Bank, N.A.

[106] The interest rate swap data was limited to transactions and events submitted to the MarkitWire platform. MarkitWire is a trade confirmation service offered by MarkitSERV.

[107] The Warehouse Trust, a subsidiary of DTCC DerivSERV LLC, is regulated as a member of the U.S. Federal Reserve System and as a limited purpose trust company by the New York State Banking Department. The Warehouse Trust provides the market with a trade database and centralized electronic infrastructure for post-trade processing of OTC credit derivatives contracts over their entire lifecycle. See DTCC, The Warehouse Trust Company, About the Warehouse Trust Company, *http://www.dtcc.com/about/subs/derivserv/warehousetrustco.php.* (last visited Jan. 31, 2012).

[108] The Warehouse Trust data contained ''allocation-level data,'' which refers to refers to transactional data that does not distinguish between isolated transactions and transactions that, although documented separately, comprise part of a larger transaction.

The Commission notes the work of other regulators in aggregating observations believed to be part of a single transaction. *See* Kathryn Chen, et al., Federal Reserve Bank of New York Staff Report, An Analysis of CDS Transactions: Implications for Public Reporting, (Sept. 2011), at 25, *http://www.newyorkfed.org/research/staff_reports/sr517.html.* The Commission notes that this allocation-level information could produce a downward bias in the notional amounts of the swap transactions in the data sets provided by the ODSG. In turn, this downward bias would produce smaller appropriate minimum block trade sizes relative to a data set that, if available with appropriate execution time stamps, would reflect the aggregate notional amount of swaps completed in a single transaction.

[109] ''Publicly reportable swap transaction'' means, unless otherwise provided in this part: (1) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap. Examples of an executed swap that does not fall within the definition of publicly reportable swap transaction may include: (1) Certain internal swaps between 100-percent-owned subsidiaries of the same parent entity; and (2) portfolio compression exercises. These examples represent swaps that are not at arm's length, but that do result in a corresponding change in the market risk position between two parties. *See* 77 FR 1,244.

[110] The excluded records represented activities such as option exercises or assignments for physical, risk optimization or compression transactions, and amendments or cancellations that were assumed to be mis-confirmed. A transaction was assumed to be mis-confirmed when it was canceled without a fee, which the Commission has inferred was the result of a confirmation correction. The Commission also excluded interest rate transactions that were indicated as assignments,

Commission also converted the notional amount of each swap transaction into a common currency denominator the U.S. dollar.[111] Interest Rate Swap Categories.

i. Interest Rate Swap Data Summary

The filtered transaction records in the interest rate swap data set contained 166,874 transactions with a combined notional value of approximately $45.4 trillion dollars.[112] These transactions included trades with a wide range of notional amounts, 28 different currencies, eight product types, 57 different floating rate indexes and tenors ranging from under one week to 55 years. Summary statistics of the filtered interest rate swap data set are presented in Table 1.[113]

TABLE 1—SUMMARY STATISTICS FOR THE INTEREST RATE SWAP DATA SET BY PRODUCT TYPE, CURRENCY, FLOATING INDEX AND TENOR[114]

	Number of transactions	Percentage of total transactions	Notional amount (billions of USD)	Percentage of total notional amount (%)
Product Type:				
Single Currency Interest Rate Swap	128,658	77	16,276	36
Over Night Index Swap (OIS)	12,816	8	16,878	37
Forward Rate Agreement (FRA)	5,936	4	7,071	16
Swaption	11,042	7	2,256	5
Other	8,395	5	2,909	6
Currency:				
European Union Euro Area euro (EUR)	46,412	28	18,648	41
United States dollar (USD)	50,917	31	11,377	25
United Kingdom pound sterling (GBP)	16,715	10	7,560	17
Japan yen (JPY)	19,502	12	4,253	9
Other	33,301	20	3,553	8
Floating Index:				
USD–LIBOR–BBA	48,651	29	9,411	21
EUR–EURIBOR–Reuters	39,446	24	9,495	21
EUR–EONIA–OIS–COMPOUND	6,517	4	9,122	20
JPY–LIBOR–BBA	19,194	12	4,010	9
GBP–LIBOR–BBA	12,835	8	2,419	5
GBP–WMBA–SONIA–COMPOUND	2,014	1	5,123	11
Other	38,190	23	5,809	13
Tenor:				
1 Month	3,171	2	11,859	26
3 Month	10,229	6	11,660	26
6 Month	2,822	2	1,701	4
1 Year	9,522	6	3,484	8
2 Year	16,450	10	3,347	7
3 Year	9,628	6	1,488	3
5 Year	26,139	16	2,712	6
7 Year	6,599	4	661	1
10 Year	34,000	20	2,746	6
30 Year	9,616	6	448	1
Other	38,671	23	5,284	12
Sample Totals	166,847	100	45,390	100

Table 2 below sets out the notional amounts of the interest rate swap data set organized by product type, currency, floating index and tenor. The table also includes the notional amounts in each percentile of a distribution of the data set.

terminations, and structurally excluded records since the Commission was unable to determine if these records were price-forming. The Commission also excluded CDS transactions that were notated as single name transactions. The data sets also included transaction records created for workflow purposes (and therefore redundant), duplicates and transaction records resulting from name changes or mergers.

[111] The Commission calculated the average daily exchange rates between relevant currencies and the U.S. dollar for the relevant three-month period covered by the data. This average daily exchange rate was then applied to the notional amounts for non-U.S. dollar denominated swap transactions.

[112] The Commission only reviewed relevant transaction records in the interest rate swap data set. As noted above, the Commission excluded duplicate and non-price forming transactions from its review. *See* note 110 supra for a list of excluded transaction records.

[113] *See* the *International Organization for Standardization* (ISO) standard *ISO 4217* for information on the currency codes used by the Commission. For information on floating rate indexes, *see also* ISDA, 2006 Definitions (2006), and supplements.

[114] In producing Table 1, the Commission counted tenors for swaps with an end date within four calendar days of a complete month relative to the swap's start date as ending on the nearest complete month.

TABLE 2—NOTIONAL AMOUNTS OF INTEREST RATE SWAP DATA SET ORGANIZED BY PRODUCT TYPE, CURRENCY, FLOATING INDEX AND TENOR

[In millions of USD]

	Mean notional amount	Percentiles						
		5th	10th	25th	50th	75th	90th	95th
Product Type:								
Single Currency Interest Rate Swap	127	4	9	23	52	117	252	438
OIS	1,293	6	13	63	341	1,261	3,784	5,282
FRA	1,168	90	133	266	631	1,039	2,000	3,018
Swaption	204	3	20	50	100	226	500	642
Other	346	*	1	23	89	250	631	1,132
Currency:								
EUR	400	6	15	38	91	249	631	1,617
USD	221	5	12	31	89	200	500	1,000
GBP	435	1	1	15	57	167	755	1,698
JPY	221	11	13	28	57	124	339	790
Other	108	4	6	13	30	78	175	308
Floating Index:								
USD–LIBOR–BBA	192	5	12	30	76	180	500	803
EUR–EURIBOR–Reuters	241	8	17	38	79	189	416	757
EUR–EONIA–OIS–COMPOUND	1,385	4	10	61	315	1,261	3,784	6,306
JPY–LIBOR–BBA	211	11	12	28	57	113	339	658
GBP–LIBOR–BBA	181	1	4	23	54	151	377	755
GBP–WMBA–SONIA–COMPOUND	2,450	75	113	283	1,509	3,018	6,037	9,055
Other	152	2	4	12	31	88	264	500
Tenor:								
1 Month	3,523	37	252	1,251	2,522	3,784	7,546	12,074
3 Month	1,081	11	38	208	604	1,250	2,000	3,018
6 Month	581	19	49	150	377	747	1,261	1,892
1 Year	348	20	31	70	151	341	755	1,261
2 Year	205	10	16	39	111	243	453	631
3 Year	154	10	16	44	95	169	315	500
5 Year	107	5	9	25	63	113	226	316
7 Year	105	7	13	29	57	113	221	315
10 Year	83	5	10	23	50	95	175	252
30 Year	47	4	7	18	26	50	95	132
Other	249	2	4	15	50	126	340	883

The Commission also analyzed the interest rate swap data set to classify the counterparties into broad groups.[115] The Commission's analysis of the interest rate swap data set revealed that approximately 50 percent of transactions were between buyers and sellers who were both identified as G–14 banks and that these transactions represented a combined notional amount of approximately $22.85 trillion or 50 percent of the relevant IRS data set's total combined notional amount.

ii. Interest Rate Swap Data Analysis

As noted above, the Commission is proposing swap categories in the interest rate asset class based on tenor and underlying currency. The Commission is of the view that these criteria would meet the objectives of grouping swaps with economic similarity and reducing unnecessary complexity for market participants in determining whether their swaps are classified within a particular swap category. Tenors were associated with concentrations of liquidity at commonly recognized points along the yield curve. In general, the Commission observed that transactions in the data set (and related market liquidity) tended to cluster at certain tenors.[116]

The Commission is proposing interest rate swap tenor groupings based on two observations regarding the data in the interest rate swap data set.[117] First, the Commission observed that price-notation conventions and points of concentrated transaction activity correspond with specific tenors (*e.g.,* three months, six months, one year, two years, etc.). Second, the Commission observed a similarity in the transaction amounts within a given tenor grouping (*e.g.,* longer-dated tenors in the data set generally had lower average notional sizes). Based on these observations, table 3 below details the proposed tenor groups for the interest rate asset class.

[115] MarkitSERV anonymized the identities of the counterparties and indicated whether a G–14 bank was a party to the swap transaction. Summary statistics relating to these anonymous numbers included: (1) Total count of unique counterparties was equal to approximately 300; (2) the average notional size of transactions involving two G–14 banks was equal to approximately $280 million; (3) the average notional size of transactions involving both a G–14 bank and a non G–14 bank (which traded at least 100 swap transactions) was equal to approximately $260 million.

[116] The Commission alternatively considered using tenor solely to determine interest rate swap categories. While this alternative approach would result in fewer swap categories (and would be based on the strongest single variable indicator of notional size in statistical regressions performed by the Commission on the interest rate swap data set), it may result in overbroad swap categories treating, for example, interest rate swaps denominated in U.S. dollars the same as those denominated in Polish zlotys, despite relative liquidity differences. As a result, this alternative approach may result in the super-major currency-denominated interest rate swaps setting the block size for all other currencies because of the super-major currency's relatively higher trading frequency. *See* note 123 infra for the Commission's definition of ''super-majority currency.''

[117] Through the performance of statistical regressions on the interest rate swap data set, the Commission found that tenor was the single strongest indicator of variations in notional amounts.

[118] The Commission chose to extend the tenor groups about one-half month beyond the commonly observed tenors to group similar tenors together and capture variations in day counts. The Commission added an additional 15 days beyond a multiple of one year to the number of days in each group to avoid ending each group on specific years.

TABLE 3—PROPOSED TENOR GROUPS FOR INTEREST RATES ASSET CLASS [118]

Tenor group	Tenor greater than	And tenor less than or equal to
1		Three months (107 days).
2	Three months (107 days)	Six months (198 days).
3	Six months (198 days)	One year (381 days).
4	One year (381 days)	Two years (746 days).
5	Two years (746 days)	Five years (1,842 days).
6	Five years (1,842 days)	Ten years (3,668 days).
7	Ten years (3,668 days)	30 years (10,973 days).
8	30 years (10,973 days).	

Similarly, through its analysis of the interest rate swap data set, the Commission found that the currency referenced in a swap explains a significant amount of variation in notional size and, hence, can be used to categorize interest rate swaps given this relationship.[119] The Commission is proposing currency groupings after considering: (1) Price-notation conventions; (2) the relative development of currency groups in the interest rate and FX futures markets; (3) the relative swap transaction total notional amounts and transaction volumes of each currency group; and (4) the relative average transaction notional amounts and lack of evidence of large transacted notional amounts or substantial volume of each currency group.[120] After considering these factors, the Commission is proposing three currency categories for the interest rate asset class: (1) Super-major currencies, which are currencies with large volume and total notional amounts; [121] (2) major currencies, which generally exhibit moderate volume and total notional amounts; [122] and (3) non-major currencies, which generally exhibit moderate to very low volume and notional amounts.

Table 4 below summarizes the Commission's three proposed currency swap categories.

TABLE 4—PROPOSED CURRENCY CATEGORIES FOR INTEREST RATES ASSET CLASS

Currency category	Component currencies
Super-Major Currencies	United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).
Major Currencies [123]	Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK) and Denmark krone (DKK).
Non-Major Currencies	All other currencies.

Table 5 below presents details on the sample characteristics of the interest rate swap data set organized by currency and tenor swap categories.

TABLE 5—SAMPLE CHARACTERISTICS OF PROPOSED INTEREST RATE SWAP CATEGORIES [124]

Currency category	Tenor group	Number of transactions	Percent of transactions (%)	Notional (billions of USD)	Percent of total notional (%)
Super-major	1	11,394	7	22,347	50
Super-major	2	2,563	2	1,813	4
Super-major	3	6,277	4	3,302	7
Super-major	4	12,395	7	3,420	8
Super-major	5	32,148	19	4,818	11
Super-major	6	42,675	26	4,220	9
Super-major	7	24,237	15	1,433	3
Super-major	8	1,857	1	56	0

[119] The Commission considered alternative approaches of using the individual floating rate indexes or currencies to determine swap categories in the interest rate asset class. These alternative approaches would have the benefit of being more correlated to an underlying curve than the recommended currency and tenor groupings. The data contained 57 floating rate indexes and 28 currencies, which would result in 456 and 224 categories respectively, after sorting by the eight identified tenor groups. The Commission anticipates, however, that grouping swaps using individual rates or currencies would not substantially increase the explanation of variations in notional amounts, while it could result in cells with relatively few observations in some currency-tenor categories. Hence, the Commission does not believe there would be a significant benefit to offset the additional compliance burden that a more granular approach would impose on market participants.

[120] Non-major currencies represent less than two percent of the total notional and about 10 percent of the transactions. These currencies typically do not have corresponding futures markets.

[121] Super-major currencies represent over 92 percent of the total notional amounts and 80 percent of the total transactions in the data set. It is noteworthy that these currencies have well-developed futures markets for general interest rates and exchange rates.

[122] Major currencies represent about six percent of the total notional amount and about 10 percent of the transactions. Some of these currencies host liquid futures markets for interest rates, and all exhibit liquid foreign exchange markets.

[123] The Commission selected these currencies for inclusion in the definition of major currencies based on the relative liquidity of these currencies in the interest rate and FX futures markets. The Commission is of the view that this list of currencies is consistent, in part, with the Commission's existing regulations in § 15.03(a), which defines ''major foreign currency as ''the currency, and the cross-rates between the currencies, of Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union.'' 17 CFR 15.03(a).

[124] Table 5 does not include swap categories with less than 200 transactions in order to preserve the anonymity of the parties to these transactions.

TABLE 5—SAMPLE CHARACTERISTICS OF PROPOSED INTEREST RATE SWAP CATEGORIES [124]—Continued

Currency category	Tenor group	Number of transactions	Percent of transactions (%)	Notional (billions of USD)	Percent of total notional (%)
Major	1	2,305	1	1,818	4
Major	2	445	0	124	0
Major	3	2,113	1	302	1
Major	4	2,639	2	226	1
Major	5	5,380	3	293	1
Major	6	3,707	2	129	0
Major	7	704	0	19	0
Major	8	<200			
Non-Major	1	403	0	64	0
Non-Major	2	247	0	26	0
Non-Major	3	2,073	1	165	0
Non-Major	4	3,354	2	256	1
Non-Major	5	5,873	4	116	0
Non-Major	6	3,935	2	41	0
Non-Major	7	<200	.....	.....	.....
Non-Major	8	<200	.....	.....	.....

Table 6 below sets out the notional amounts of the interest rate swap data set organized by currency and tenor categories. The table includes the mean notional amount of each currency and tenor category, as well as the notional amounts in each percentile of a distribution of the data set.

TABLE 6—NOTIONAL AMOUNTS OF INTEREST RATE SWAP DATA SET ORGANIZED BY THE PROPOSED INTEREST RATE SWAP CATEGORIES

[In millions of USD]

Currency group	Tenor group	Mean	Transactions percentiles						
			5th	10th	25th	50th	75th	90th	95th
Super-major	1	1,961	10	36	500	1,000	2,260	4,000	6,306
Super-major	2	708	13	41	200	500	883	1,500	2,260
Super-major	3	526	47	75	150	272	565	1,179	1,809
Super-major	4	276	19	43	100	176	304	565	848
Super-major	5	150	9	21	50	100	158	301	482
Super-major	6	99	6	12	30	54	100	204	305
Super-major	7	59	1	5	14	31	63	126	200
Super-major	8	30	0	0	1	13	37	65	118
Major	1	789	80	133	175	312	573	921	1,313
Major	2	279	50	70	120	210	350	480	921
Major	3	143	13	26	52	97	175	264	438
Major	4	86	9	16	33	66	104	184	240
Major	5	54	4	8	19	44	72	109	145
Major	6	35	4	7	13	23	46	72	96
Major	7	27	5	7	11	20	31	49	75
Major	8	<200							
Non-major	1	160	19	37	64	129	225	315	450
Non-major	2	106	16	23	39	72	145	233	311
Non-major	3	79	8	22	31	56	102	157	224
Non-major	4	76	6	9	16	27	50	78	108
Non-major	5	20	2	4	8	14	23	39	54
Non-major	6	10	2	2	4	8	13	21	29
Non-major	7	<200	.....	.....	.....	.....	.....	.....	.....
Non-major	8	<200	.....	.....	.....	.....	.....	.....	.....

Request for Comment

Q2. Please provide comments regarding the Commission's proposed two criteria (tenor and underlying currency type) for determining swap categories in the interest rate asset class.

Q3. As a variation of the proposed approach, should specific currencies as proposed to be assigned be moved to other proposed currency categories?

Q4. As a second variation to the proposed approach, the Commission is considering, for super-major currency interest rate swaps, bifurcating the less than three month tenor category into two separate swap categories: (1) A swap category composed of super-major currency interest rate swaps with a less than 21 day tenor; and (2) a swap category composed of super-major currency interest rate swaps with a greater than 21 day tenor, but less than three month tenor (107 days). The Commission requests comment on the appropriateness of this variation.[125]

[125] This approach would yield an appropriate minimum block size for super-major currency interest rate swaps with a less than 21 day tenor of $13 billion based on the 67-percent notional amount calculation proposed in § 43.6(c)(1). The appropriate minimum block size for interest rate

Q5. As a third variation to the proposed approach, the Commission considered floating rate index, product type, duration equivalents, tenor, individual currencies,[126] and currency categories in determining the economic similarities among the swaps in the interest rate asset class before settling on tenor and currency groupings as the sole criteria. Should the Commission use one or more of these other characteristics in addition to, or instead of, the proposed swap categories in the interest rate asset class?

Q6. The proposed interest rate swap categories generally resulted in the grouping of swaps characterized by similar market activity—*i.e.,* high, medium, and low volumes and notional sizes. The Commission requests comment as to whether other measures of market activity or swap characteristics should be used to group or validate the grouping of swaps.

Q7. What considerations should the Commission take into account related to the approach for calculating the tenor of back-dated swaps (*i.e.,* those swaps in which the start date is prior to the execution date)? How should back-dated swaps be categorized for the purposes of determining the tenor?

Q8. Should the Commission consider expanding or contracting the number of currency categories, and, if so, which currencies should be placed in each category? The Commission asks commenters to describe any specific recommendations and include market data in support of such recommendations.

c. Credit Swap Categories

i. Credit Swap Data Summary

The CDS data set contained 98,931 CDS index records that would fall within the definition of publicly reportable swap transaction,[127] with a combined notional value of approximately $4.6 trillion dollars.[128] The CDS data set contained transactions based on 26 broad credit indexes.[129] Of those indexes, each of the iTraxx Europe Series and the Dow Jones North America investment grade CDS indexes (''CDX.NA.IG'') served as the basis for over 20 percent of the total number of transactions and over 33 percent of the total notional value in the relevant CDS data set. Table 7 sets out summary statistics of the CDS data set and includes those CDS indexes with greater than five transactions per day on average.

TABLE 7—SUMMARY STATISTICS BY CDS INDEX NAME

Names	Number of transactions	Percentage of total transactions (%)	Notional amount (in millions of USD)	Percentage of total notional amount (%)
ITRAXX EUROPE SERIES 13 V1	18,287	18.48	1,138,362	24.83
CDX.NA.IG.14	12,611	12.75	1,083,974	23.64
ITRAXX EUROPE XO SERIES 13 V1	8,713	8.81	153,365	3.34
CDX.NA.HY.14	7,984	8.07	172,599	3.76
ITRAXX EUROPE SENIOR FINANCIALS SERIES 13 V1	4,774	4.83	187,978	4.10
CDX.NA.IG.9	4,134	4.18	388,650	8.48
ITRAXX EUROPE XO SERIES 13 V2	3,959	4.00	66,894	1.46
CDX.NA.IG.9 TRANCHE	3,357	3.39	112,411	2.45
ITRAXX SOVX CEEMEA SERIES 3 V1	3,252	3.29	32,291	0.70
CDX.EM.13	3,052	3.08	34,952	0.76
ITRAXX SOVX WESTERN EUROPE SERIES 3 V1	2,377	2.40	74,068	1.62
ITRAXX AUSTRALIA SERIES NUMBER 13 V1	2,138	2.16	31,540	0.69
ITRAXX EUROPE SERIES 9 V1	1,893	1.91	188,364	4.11
ITRAXX EUROPE SUB FINANCIALS SERIES 13 V1	1,779	1.80	50,241	1.10
ITRAXX EUROPE SERIES 9 V1 TRANCHE	1,577	1.59	50,269	1.10
ITRAXX JAPAN SERIES NUMBER 13 V1	1,406	1.42	19,100	0.42
ITRAXX ASIA EX-JAPAN IG SERIES NUMBER 13 V1	1,319	1.33	15,856	0.35
ITRAXX SOVX ASIA PACIFIC SERIES 3 V1	1,001	1.01	11,666	0.25
ITRAXX EUROPE HIVOL SERIES 13 V1	788	0.80	30,585	0.67
CMBX.NA.AAA.1	463	0.47	13,384	0.29
ITRAXX EUROPE SERIES 12 V1	452	0.46	71,161	1.55
CMBX.NA.AJ.3	392	0.40	6,332	0.14
CMBX.NA.AAA.2	381	0.39	8,433	0.18
LCDX.NA.14	380	0.38	7,063	0.15
MCDX.NA.14	350	0.35	2,798	0.06
CMBX.NA.AAA.4	337	0.34	6,024	0.13
CMBX.NA.A.1	332	0.34	3,834	0.08
IOS.FN30.500.09	317	0.32	7,836	0.17
Total	87,805	88.75	3,970,029	86.59

swaps with a tenor of 21 days to three months would remain at $6.4 billion in the super-major currency swap category. *See* proposed appendix F to part 43 of the Commission's regulations *infra.*

[126] The Commission found that the precision of an approach utilizing the above-mentioned tenor groupings along with individual currencies was only marginally improved.

[127] *See* note 109 *supra.*

[128] The CDS index transactions in the data set made up approximately 33 percent of the total filtered records and 75 percent of the CDS markets' notional amount for the three months of data provided. The data set contained over 250 different reference indexes; 400 reference index and tenor combinations; and 450 reference index, tenor, and tranche combinations. The data set also contained three different currencies: USD (53%), EUR (46%), and JPY (1%). The Commission notes that in all but a handful of records, each reference index transaction was denoted in a single currency.

[129] Those indexes were: (1) ABX.HE; (2) CDX.EM; (3) CDX.NA.HY; (4) CDX.NA.IG; (5) CDX.NA.IG.HVOL; (6) CDX.NA.XO; (7) CMBX.NA; (8) IOS.FN30; (9) iTRAXX Asia ex-Japan HY; (10) iTRAXX Asia ex-Japan IG; (11) iTRAXX Australia; (12) iTRAXX Europe Series; (13) iTRAXX Europe Subs; (14) iTRAXX Japan 80; (15) iTRAXX Japan HiVol; (16) iTRAXX Japan Series; (17) iTRAXX LEVX Senior; (18) iTRAXX SOVX Asia; (19) iTRAXX SOVX CEEMA; (20) iTRAXX Western Europe; (21) LCDX.NA; (22) MCDX.NA; (23) PO.FN30; (24) PRIMEX.ARM; (25) PRIMEX.FRM; and (26) TRX.NA.

The Commission identified the following seven terms as the most relevant for the purposes of the Commission's analysis: [130] (1) Notional amount; (2) notional currency; (3) tranche indicator; (4) fixed rate; (5) tenor; (6) spread; and (7) RED code.[131] Summary statistics for the relevant CDS data set included: Average notional amount of approximately $46 million; median notional amount of approximately $24 million; mode notional amount of approximately $32 million; and skewness of 13 and kurtosis over 450, indicating that the sample's notional amounts were not normally distributed.[132] After rounding,[133] the smallest 25 percent of transactions had notional values of $9 million or less and the largest five percent of trades had notional values greater than $150 million. The swaps with the top ten most frequently traded notional sizes accounted for nearly 65 percent of all transactions and 40 percent of the total notional value.[134]

The Commission also analyzed the CDS data set to classify the counterparties into broad groups.[135] The Commission's analysis of the CDS data set revealed that approximately 55 percent of transactions were between buyers and sellers who were both identified as G–14 banks and that these transactions represented a combined notional amount of approximately $3.1 trillion, or 66 percent of the relevant CDS data set's total combined notional amount.[136]

ii. Credit Swap Data Analysis

As noted above, the Commission is proposing to use tenor and conventional spread criteria to define swap categories for CDS indexes. The Commission anticipates that these proposed criteria would provide an appropriate way to group swaps with economic similarities and to reduce unnecessary complexity for market participants in determining whether their swaps are classified within a particular swap category. The Commission is proposing the following six broad tenor groups in the credit asset class: (1) Zero to two years (0–746 days); (2) over two to four years (747–1,476 days); (3) over four to six years (1,477–2,207 days) (which include the five-year tenor); (4) over six to eight-and-a-half years (2,208–3,120 days); (5) over eight-and-a-half to 12.5 years (3,121–4,581 days) and (6) greater than 12.5 years (4,581 days).[137] The Commission added an additional 15 days to each tenor group beyond a multiple of one year in order to avoid ending each group on specific years.

The Commission is proposing these swap categories based on the way transactions in the CDS data set clustered towards the center of each tenor band. While the majority of transactions in the CDS data set consisted of corporate credit default index swaps with a five-year tenor, the Commission found that trading of corporate credit default index swaps also occurred in other tenor ranges.[138] The Commission believes that its proposed approach is appropriate since CDS on indexes other than corporate indexes (*e.g.,* asset backed indexes, municipal indexes, sovereign indexes) may also trade at tenors other than five years.[139]

With respect to the conventional spread criterion, the Commission is proposing ranges of spread values based on the Commission's review of the distribution of spreads in the entire CDS data set.[140] In particular, the Commission observed that the relevant CDS data set partitioned at the 175 basis points (''bps'') and 350 bps levels.[141] The Commission found that significant differences existed in the CDS data set between CDS indexes with spread values under 175 bps and those in the other two swap categories. Table 8 shows the summary statistics of the proposed criteria to determine swap categories for swaps in the credit asset class.[142]

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[130] Each transaction record contained up to 75 fields identifying information such as the anonymized counterparty identifier, trade date, submit date, transaction type, RED code (*i.e.,* the particular index series, version, or vintage), notional amount, notional currency, fixed rate, confirm date, spread, points upfront and several other variables.

[131] The RED code is the industry standard identifier for CDS contracts. RED codes are nine character codes (similar to CUSIP codes for securities) where the first six characters refer to the reference entity (or index) when the last three characters refer to the reference obligation, that is, the version or series of an index, and where the first five characters refer to the reference entity (or index) when the last four refer to the vintage of an index. RED codes are used by DTCC to confirm CDS trades on the DTCC Deriv/SERV platform. *See also* Markit Credit Indices, A Primer, Nov. 2008, 30, available at *https://www.markit.com/news/Credit%20Indices%20Primer.pdf.*

[132] Two times the ''social size'' *see* note 16 supra, for the relevant CDS data set was $93 million, covered 87 percent of the number of transactions, and 49 percent of the cumulative notional amount. Five times the social size, or $230 million, covered 97 percent of transactions and 75 percent of the cumulative notional amount.

[133] The Commission used the rounding convention set forth in § 43.4(g) of the Commission's regulations.

[134] In descending order and in millions of dollars, the ten most frequently traded rounded notional amounts included: 32 (the mode); 10; 25; 13; 50; 63; 5; 100; 6; and 20.

[135] The Commission notes that the CDS data set was anonymized by The Warehouse Trust, but counterparties were identified by a number value and an account number in one of the following eleven groups: Asset managers, bank, custodian, dealer, financial services, G14 dealer, hedge fund, insurance, non-financial, other, and pension plan. Summary statistics relating to these identifiers included: (1) Total count of buyer account identifiers equal to approximately 1,900; (2) total count of seller account identifiers equal to approximately 1,700; (3) total count of unique buyer and seller account identifiers equal to approximately 2,600; (4) total count of buyers equal to approximately 600; (5) total count of sellers equal to approximately 500; and (6) total count of unique buyers and sellers equal to approximately 700. The CDS data set identified counterparties as belonging to one of the eleven groups, and the average notional size of transactions in the eight tenor groups which contained more than 100 transactions ranging from approximately $19 million to $92 million.

[136] The Commission notes that the CDS data set only included transaction records where a G–14 bank was one of the counterparties, and did not include transaction records with two buy-side counterparties. A natural bias was present in the percentage of market share that G–14 banks have in the CDS market.

[137] The Commission assessed the possibility of applying the tenor categories proposed for swaps in the interest rate asset class to the distribution of notional sizes in the CDS indexes and anticipates the level of granularity proposed to categorize swaps in the interest rate asset class by tenor would be inappropriate for the CDS index market. The Commission anticipates that this level of granularity would be inappropriate because the vast majority of CDS index transactions in the data set were for five years (or approximately 1,825 days). Based on the concentration of CDS index transactions in five-year tenors, the Commission is proposing a six tenor bands for CDS indexes.

[138] For example, based on the observed CDS data set, off-the-run swaps (*i.e.,* previous five-year tenor swaps for corporate credit default index swaps) have less than five years to maturity and displayed different trading patterns than the five-year, on-the-run swaps.

[139] For example, based on the observed CDS data set, the majority of municipal credit default index swaps traded with tenors of around 10 years.

[140] *See* note 102 *supra* for a definition of conventional spread.

[141] The Commission is proposing partition levels by a qualitative examination of multiple histogram distributions of the traded and fixed spreads from the CDS data set. This qualitative examination was confirmed through a partition test (using JMP software), including both before and after controlling for the effects of tenor on the distribution. The Commission observed that 175 bps explained the greatest difference in means of the two data sets resulting from a single partition of the data. The Commission also observed that 350 bps was an appropriate partition for CDS index transactions with spreads over 175 bps.

[142] Table 8 uses tenor and spread criteria discussed above, in a standardized, least squared regression utilizing observed log notional amounts.

TABLE 8—CDS INDEX SAMPLE STATISTICS BY PROPOSED SWAP CATEGORY CRITERIA

Spread	Sum of notional amounts (in billions of USD)	Number of trades
<175	3,761	59,887
175-to-350	233	11,045
350>	577	27,998
Tenor (in calendar days):		
0–746	146	1,421
747–1,476	569	6,774
1,477–2,207	3,490	79,357
2,208–3,120	159	2,724
3,121–4,581	18	497
4,582+	190	8,157

Request for Comment

Q9. The Commission seeks comment on all aspects of its proposed approach to define swap categories for the credit asset class for the purpose of setting appropriate minimum block sizes. More specifically, the Commission seeks comment as to whether the proposed grouping, alternatives or some other combination of alternatives offer the best means to identify swap categories.

Q10. As an alternative to the proposed criteria, should the Commission use other criteria? [143] The Commission considered the following alternative criteria: (1) The underlying reference CDS index or the more specific RED code (of which there were hundreds); [144] (2) the tranche level; [145] (3) on-the-run versus off-the-run version or series; [146] and (4) the difference in the average notional amounts of transactions by groupings of counterparties.[147]

Q11. As another alternative, the Commission seeks comment on the possibility of establishing two swap categories in the credit asset class based on ''activity groupings'' of notional amounts of transactions: A ''more active group''; and a ''less active group.'' The more active group would be calculated by ordering, from most to least, the sum of non-rounded notional amounts of all swaps reported to SDRs by a CDS index (*e.g.,* CDX.NA.IG) and then selecting the CDS indexes represented in the first 50 percent of aggregate notional amount. If only one index accounted for the first 50 percent of aggregate notional amount, then the next largest index also would be included in the more active group. The less active group would be comprised of the remainder of all credit index transactions that are not within the more active group. Should the Commission use this activity grouping approach to categorize CDS indexes? If so, how should the Commission determine appropriate minimum block sizes and cap sizes?

Q12. As a third alternative, the Commission seeks comment on the possibility of establishing swap categories in the credit asset class based on sector groupings of the underlying reference entities. Under this alternative approach, the Commission would group the CDS index market into the following four sectors: Corporate; sovereign; municipal; and mortgage-backed security. An index with a mix of sectors represented in the reference entities

[143] The Commission notes that the investment grade of an underlying asset is a material economic term of each CDS contract. When reviewing the CDS data set, the Commission considered using investment grade as an alternative criterion through which to group CDS into separate swap categories. The Commission, however, is of the view that using this alternative criterion would be inappropriate in light of the statutory prohibition against references to credit ratings in federal regulations. This prohibition is set forth in section 939 of the Dodd-Frank Act.

Section 939A(a) of the Dodd-Frank Act provides, in relevant part, that ''each Federal agency shall, to the extent applicable, review—(1) any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument; and (2) any references to or requirement in such regulations regarding credit ratings.'' In addition, section 939A(b) further provides that ''[e]ach such agency shall modify any such regulations identified by the review * * * to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' 15 U.S.C. 78o–7 note.

Pursuant to the directive set forth in section 939A of the Dodd-Frank Act, the Commission has issued final rules removing all references to credit ratings in the Commission's regulations. *See* 76 FR 78,776, Dec. 19, 2011; 76 FR 44,262, July 25, 2011.

[144] While the underlying indexes and the RED codes helped explain average notional size in the CDS data set, the Commission is of the view—based on the large number of currently offered indexes, the frequency with which new indexes may be created, and the large number of RED codes—that such an approach may not be practicable and may impose unnecessary complexity on market participants trying to determine what appropriate minimum block sizes apply to what transactions.

[145] In the CDS market, a ''tranche'' means a particular segment of the loss distribution of the underlying CDS index. For example, tranches may be specified by the loss distribution for equity, mezzanine (junior) debt, and senior debt on the referenced entities. The Commission found that the tranche-level data was even more granular than index-level data. Similarly, the Commission anticipates that grouping the relevant CDS data set in tranche criterion may not be practicable because it may produce too many swap categories and as a result would impose unnecessary complexity on market participants.

[146] An on-the-run CDS index represents the most recently issued version of an index. For example, every six months, Dow Jones selects 125 investment grade entities domiciled in North America to make up the Dow Jones North American investment grade index (''CDX.NA.IG''). Each new CDX.NA.IG index is given a new series number while market participants continue to trade the old or ''off-the-run'' CDX.NA.IG series. The Commission observed that an on-the-run index series was more actively traded than off-the-run index series. Each version or series of an index had a distinct group of tenors and, in most cases, the five year tenor was most active. The index provider determines the composition of each index though a defined list of reference entities. The index provider has discretion to change the composition of the list of reference entities for each new version or series of an index. In its analysis of the CDS data set, the Commission generally observed either no change or a small change (ranging from one percent to ten percent) of existing composition in the reference entities underlying a new version or series of an index. Because of these two dynamics (tenor and index composition), the CDS data set contained transactions within a given index with different versions and series that were in some instances identical and in others not identical across varying tenors. While the off-the-run transactions were generally larger on average than the on-the-run transactions, trading activity in the on-the-run indexes was more active than in the off-the-run indexes.

The Commission decided not to use this level of detail for grouping CDS indexes into categories because: (i) The underlying components of swaps with differing versions or series based on the same named index are broadly similar, if not the same, indicative of economic substitutability across versions or series; (ii) differences in the average notional amount across differing versions or series were explained by differences in tenor; and (iii) and using versions or series as the criterion for defining CDS swap categories may result in an unnecessary level of complexity.

[147] Although the Commission was not able to examine non-anonymized data, the Commission did observe differences of approximately 50 percent from the average notional amount for transactions involving different groups based on the counterparty identifiers provided by The Warehouse Trust. The Commission, however, believes that it would be neither practical nor equitable to base a swap category and related appropriate minimum block size based on the predominant business activity of a counterparty.

would be categorized by the sector representing the majority of entities. The Commission is of the view that in addition to these four distinct sectors, a fifth catch-all group (other) would be necessary to categorize any new swap index that either does not fall into any of these four enumerated sectors or is in mixed sectors not predominated by a single sector.

Q13. As a fourth alternative, should the Commission consider basing swap categories for the credit asset class on individual CDS indexes? For example, CDX.NA.IG would constitute its own swap category.

Q14. Should the Commission combine aspects of the above alternatives? For example, should the Commission distinguish between on-the-run and off-the-run series under an index grouping approach? The Commission seeks comment on whether distinguishing between on-the-run and off-the-run series and tenor would be appropriate under this approach, given the underlying economic similarity of swaps utilizing the same underlying CDS index.

2. Swap Category in the Equity Asset Class

The Commission is proposing a single swap category for swaps in the equity asset class. The Commission is proposing this approach based on: (1) The existence of a highly liquid underlying cash market; (2) the absence of time delays for reporting block trades in the underlying equity cash market; (3) the small relative size of the equity index swaps market relative to the futures, options, and cash equity index markets; and (4) the Commission's goal to protect the price discovery function of the underlying equity cash market and futures market by ensuring that the Commission does not create an incentive to engage in regulatory arbitrage among the cash, swaps, and futures markets.[148]

Request for Comment

Q15. Please provide specific comments regarding the Commission's proposed approach with respect to having one swap category in the equity asset class.

Q16. As an alternative to the proposed approach, should the Commission establish one or more swap categories for swaps in the equity asset class based on any of the following criteria or a combination of such criteria: (1) Tenor; (2) publicly-listed equity indexes and custom equity indexes; [149] (3) market capitalization of the underlying index components; [150] and/or (4) whether a swap is based on an ''open market'' versus a ''closed market''? [151]

Q16.a. If the Commission follows the alternative approach to use tenor as a criterion to distinguish between swap categories, how should the Commission address the practice of long-tenured swaps that are terminated prior to maturity?

3. Swap Categories in the FX Asset Class

The Commission proposes to establish swap categories for the FX asset class based on unique currency combinations. The Commission bases this approach on the observation that FX swaps and instruments with identical currency combinations draw upon the same liquidity pools. The Commission proposes in §§ 43.6(b)(4)(i) and (b)(4)(ii) to distinguish between FX swaps and instruments based on the existence of a related futures contract. Accordingly, the Commission would establish swap categories under proposed § 43.6(b)(4)(i) based on the unique currency combinations of super-major currencies, major currencies and the currencies of Brazil, China, Czech Republic, Hungary, Israel, Mexico, New Zealand, Poland, Russia, and Turkey (*e.g.,* euro (EUR) and Canadian dollar (CAD) combination would be a separate swap category; Swedish kronor (SEK) and U.S. dollar (USD) combination would be a separate swap category; etc.). These currency combinations currently have sufficient liquidity in the underlying futures market, which may suggest that there may be sufficient liquidity in the swaps market for these currency combinations. In proposed § 43.6(b)(4)(ii), the Commission would establish swap categories based on unique currency combinations not included in proposed § 43.6(b)(4)(i).

Request for Comment

Q17. The Commission requests specific comments, data and analysis in respect of its proposed approach to determining swap categories for the FX asset class.

Q18. As an alternative to the proposal, should the Commission establish swap categories based on currency class pairings? In other words, swap categories that correspond to: (i) Super-major-to-super-major; (ii) super-major-to-major; (iii) super-major-to-non-major; (iv) major-to-major; (v) major-to-non-major; and (vi) non-major-to-non-major currency class pairings? [152]

Q18.a. Should the Commission develop currency and tenor swap categories similar to what it is proposing for swaps in the interest rate asset class? The currency and tenor categories could be adjusted to reflect current trading activity in the FX swap and instrument markets.

Q19. In the post-initial period, should the Commission include tenor as a criterion for distinguishing FX swap categories? For example, should the Commission separate FX swaps with short-dated tenors (*e.g.,* less than one or three months) from those with long-dated tenors (*e.g.,* greater than one or three months)? [153]

Q20. The Commission is considering as a variation of its proposed approach to characterize certain swap categories within the FX asset class as ''infrequently transacted.'' Infrequently-transacted swaps would exhibit all or some of the following features: (1) The constituent swap or swaps to which they are economically related are not

[148] As used in this Further Proposal, the term ''regulatory arbitrage'' means engaging in financial structuring or a series of transactions without economic substance in order to avoid unwelcome regulation or to exploit inconsistencies in regulations.

[149] Under this alternative approach, ''publicly-listed'' equity indexes would be defined as equity swaps with reference prices economically related to equity indexes with publicly available index weightings. ''Custom equity index swaps,'' in contrast, would be defined as equity swaps that utilize reference prices that are not economically related to equity indexes with publicly known index weightings. This alternative approach would be based on the premise that a custom equity index swap would have a higher probability of being subject to liquidity risk.

[150] For example, if an equity index is composed of the weighted average of ten equity components, A Corp., B Corp., C Corp., D Corp., E Corp., F Corp., G Corp., H Corp., I Corp., and J Corp. corresponding to a market capitalization on the day prior to the related swap transaction of $100 million, $200 million, $300 million, $400 million, $500 million, $200 million, $100 million, $200 million, $300 million, and $500 million, respectively, then it would result in an average market capitalization of $280 million. This alternative approach is premised on market capitalization serving as indicia of cash market liquidity for derivatives on the index.

[151] Under ISDA's Master Confirmation Templates, ''open market'' references ISDA annexes with underlying shares or indices in Australia, Hong Kong, New Zealand or Singapore. ''Closed market'' references ISDA annexes with underlying shares or indices in India, Indonesia, Korea, Malaysia, Taiwan and Thailand. For more information, *see* ISDA, ISDA Equity Derivatives, ISDA Master Confirmation Templates (by region), *http://www.isda.org/c_and_a/equity_der.html#defs.*

Under this alternative, other countries outside of Asia could be added to the list in a similar fashion.

[152] This approach would result in fewer swap categories, thereby easing administrative burdens related to determining the appropriate swap category corresponding to a swap. At the same time, however, this approach would require the use of a common denominator currency (*e.g.,* the U.S. dollar) for determining the applicable notional amount. This would imply a currency conversion, thereby increasing administrative burdens associated with currency conversions.

[153] This approach would be predicated on expected differing liquidity and notional size distributions between FX swaps with differing tenors.

executed on, or pursuant to the rules of, a SEF or DCM; (2) few market participants have transacted in these swaps or in economically-related swaps; or (3) few swap transactions are executed during a historic period in these swaps or in economically-related swaps.[154]

4. Swap Categories in the Other Commodity Asset Class

The Commission proposes to determine swap categories in the other commodity asset class based on groupings of economically related swaps under proposed §§ 43.6(b)(5)(i) and (ii) and based on groupings of swaps sharing a common product type under proposed § 43.6(b)(5)(iii). Swap contracts and futures contracts that are economically related to one another—as defined by the Commission in a proposed amendment to § 43.2—are economic substitutes that should be subject to the same appropriate minimum block sizes or block trade rules for futures contracts, as applicable.[155] Accordingly, the Commission is proposing to define ''economically related'' in § 43.2 as a direct or indirect reference to the same commodity at the same delivery location or locations,[156] or with the same or substantially similar cash market price series.[157] The Commission anticipates that this proposed definition would: (1) Ensure that swap contracts with shared reference price characteristics indicating economic substitutability (*i.e.,* an ability to offset some or all of the risks across swaps in a specific category) are grouped together within a common swap category; and (2) provide further clarity as to which swaps are described in § 43.4(d)(4)(ii)(B).[158] This definition would apply to the use of the term ''economically related'' throughout all of part 43 of the Commission's regulations.

Under proposed § 43.6(b)(5)(i), the Commission would establish separate swap categories for swaps that are economically related to one of the contracts listed on appendix B to part 43. Appendix B to part 43 currently lists 28 enumerated physical commodity contracts and other contracts (*i.e.,* Brent Crude Oil (ICE)) for which an SDR must ensure the public dissemination of the actual underlying asset for the applicable publicly reported swap transactions under § 43.4(d)(4)(ii) of the Commission's regulations.[159] The Commission previously has identified these other commodity contracts as: (1) Having high levels of open interest and significant cash flow; and (2) serving as a reference price for a significant number of cash market transactions. The Commission is proposing to establish an initial appropriate minimum block size for the swap categories corresponding to each of these contracts to the extent that a DCM has set a block trade size for such a contract.

Under proposed § 43.6(b)(5)(ii), the Commission would establish swap categories based on swaps in the other commodity asset class that are: (1) Not economically related to one of the futures or swap contracts listed in appendix B to part 43; (2) futures related; and (3) economically related to the relevant futures contract that is subject to the block trade rules of a DCM. Proposed § 43.6(b)(5)(ii) lists the futures contracts to which these swap categories are economically related;[160] these swap categories would include any swap that is economically related to such contracts. The swap categories established by proposed § 43.6(b)(5)(i) (discussed in the paragraphs above) differ from the swap categories established by proposed § 43.6(b)(5)(ii) in that the former may be economically related to futures contracts that are not subject to the block trade rules of a DCM, whereas the latter are economically related to futures contracts that are subject to the block trade rules of a DCM.[161]

Under proposed § 43.6(b)(5)(iii), the Commission would establish swap categories for all other commodity swaps that are not categorized under proposed §§ 43.6(b)(5)(i) or (ii). These swaps are not economically related to one of the contracts listed in appendix B to part 43 or in proposed § 43.6(b)(5)(ii). In particular, the Commission would determine the appropriate swap category based on the product types described in appendix D to part 43 to which the underlying asset(s) of the swap would apply or otherwise relate. Proposed appendix D to part 43 establishes ''Other Commodity Groups'' and certain ''Individual Other Commodities'' within those groups. To the extent that there is an ''Individual Other Commodity'' listed, the Commission would deem the ''Individual Other Commodity'' as a separate swap category. For example, regardless of whether the underlying asset to an off-facility swap is ''Sugar No. 16'' or ''Sugar No. 5,'' the underlying asset would be grouped as ''Sugar.'' The Commission thereafter would set the appropriate minimum block size for each of the swap categories listed in appendix D to part 43.

In circumstances where a swap does not apply or otherwise relate to a specific ''Individual Other Commodity'' listed under the ''Other Commodity Group'' in appendix D to part 43, the Commission would categorize such swap as falling under the respective

[154] The Commission considered applying a methodology resulting in less relative transparency to such infrequently transacted swap categories (*e.g.,* a 50-percent notional amount calculation).

[155] In the Adopting Release, the Commission explained: ''For the purposes of part 43, swaps are economically related, as described in § 43.4(d)(4)(ii)(B), if such contract utilizes as its sole floating reference price the prices generated directly or indirectly from the price of a single contract described in appendix B to part 43.'' 77 FR 1,211. Further, the Commission explained that ''an 'indirect' price link to an Enumerated Physical Commodity Contract or an Other Contract described in appendix B to part 43 includes situations where the swap reference price is linked to prices of a cash-settled contract described in appendix B to part 43 that itself is cash-settled based on a physical-delivery settlement price to such contract.'' *Id.* at n.289.

[156] For example, a swap utilizing the Platts Gas Daily/Platts IFERC reference price is economically related to the Henry Hub Natural Gas (NYMEX) (futures) contract because it is based on the same commodity at the same delivery location as that underlying the Henry Hub Natural Gas (NYMEX) (futures) contract.

[157] For example, a swap utilizing the Standard and Poor's (''S&P'') 500 reference price is economically related to the S&P 500 Stock Index futures contract because it is based on the same cash market price series.

[158] The Commission is proposing to amend § 43.2 to define ''reference price'' as a floating price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged or accrued under the terms of a swap contract. The Commission is proposing to use this term in connection with the establishment of a method through which parties to a swap transaction may elect to apply the lowest appropriate minimum block size applicable to one component swap category of such swap transaction.

[159] The Commission is proposing to add 13 contracts to appendix B to part 43, as described in detail in section III.C.4 infra. Each of these additional swap contracts would be categorized in its own other commodity swap grouping.

[160] Specifically, these additional other commodity swap categories would be based on the following futures contracts: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index Excess Return; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI) (GSCI Excess Return Index); NYMEX Gulf Coast Gasoline; NYMEX Gulf Coast Sour Crude Oil; NYMEX Gulf Coast Ultra Low Sulfur Diesel; CME Hurricane Index; CME International Skimmed Milk Powder; NYMEX New York Harbor Ultra Low Sulfur Diesel; CBOT Nonfarm Payroll; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; CME U.S. Dollar Cash Settled Crude Palm Oil; and CME Wood Pulp.

[161] This distinction is noteworthy because proposed § 43.6(e)(3) provides that ''[p]ublicly reportable swap transactions described in § 43.6(b)(5)(i) that are economically related to a futures contract in appendix B to this part [43] shall not qualify to be treated as block trades or large notional off-facility swaps (as applicable) [during the initial period], if such futures contract is not subject to a designated contract market's block trading rules.'' *See* the discussion of this proposed provision in section II.D.4(a) infra.

''Other'' swap categories. For example, an emissions swap would be categorized as ''Emissions,'' while a swap in which the underlying asset is aluminum would be categorized as ''Base Metals—Other.'' Additionally, in circumstances where the underlying asset of swap does not apply or otherwise relate to an ''Individual Other Commodity'' or an ''Other'' swap category, the Commission would categorize such swap as either ''Other Agricultural'' or ''Other Non-Agricultural.''

Request for Comment

Q21. The Commission requests specific comments, data and analysis with respect to its proposed approach for determining swap categories for the other commodity asset class.

Q22. Does the proposed definition of economically related appropriately capture swaps that are economic substitutes within a single swap category? Should the Commission define economically related to mean swaps that have historically correlated changes in daily prices within a swap category (*e.g.,* a correlation coefficient of 0.95 or greater)? This alternative approach would be based on the notion that historical correlation is indicative of economic substitutability.

Q23. In the post-initial period, should the Commission include tenor as a criterion for determining swap categories for the other commodity asset class? For example, should the Commission separate other commodity swaps with short-dated tenors (*e.g.,* less than one or three months) from those with long-dated tenors (*e.g.,* greater than one or three months)? [162]

Q24. As a variation of the proposal, should the Commission create additional product types in order to provide specific swap categories for commodities not specifically listed in proposed appendix D to part 43? [163]

Q25. As a variation of the proposal, should the Commission further refine the swap categories in § 43.6(b)(5)(iii) (*i.e.,* those based on product types listed in proposed appendix D to part 43) on the basis of geography? If so, on what basis and for which product types?

Q26. As a variation on the proposed approach, should the Commission include inflation index futures contracts in proposed § 43.6(b)(5)(ii)?

Q27. As an alternative approach, the Commission is considering characterizing certain swap categories within the other commodity asset class as ''infrequently transacted.'' This alternative approach is consistent with the approach discussed in Q20 above.

Q27.a. Should this alternative approach apply to asset classes in addition to the FX and other commodity asset classes?

Q28. As another alternative, should the Commission consider dividing the swaps in the other commodity asset class into swap categories based on relative market concentration? For example, a variation of the Herfindahl-Hirschman Index (''HHI'') based on the average daily or average month-end HHI score to determine swap categories for the other commodity asset class? [164] Would a daily or month-end average long-short swap position HHI [165] for a three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) of lower than 2,500, 2,000, or 1,500 be indicative of a market that is not concentrated? [166]

Q28.a. Should the Commission use this approach for other asset classes?

D. Proposed Appropriate Minimum Block Size Methodologies for the Initial and Post-Initial Periods

The Commission is proposing a tailored approach for determining appropriate minimum block sizes during the initial and post-initial periods for each asset class. In the subsections below, the Commission sets out a more detailed discussion of the appropriate minimum block methodologies for swaps within: (1) The interest rate and credit asset classes; (2) the single swap category in the equity asset class; (3) swap categories in the FX asset class; and (4) swap categories in the other commodity asset class. Thereafter, the Commission discusses special rules for determining the appropriate minimum block sizes across asset classes. For convenience, the chart immediately below summarizes swap categories and calculation methodologies that the Commission is proposing for each asset class.

PROPOSED APPROACH

Asset class	Swap category criteria	Initial implementation period	Post-initial implementation period [167]
Interest Rates	By unique currency and tenor grouping [168].	67-percent notional amount calculation by swap category [169].	67-percent notional amount calculation by swap category.[170]
Credit	By tenor and conventional spread grouping [171].		
FX	By numerated FX currency combinations (*i.e.,* futures related) [172].	Based on DCM futures block size by swap category [173].	
	By non-enumerated FX currency combinations (*i.e.,* non-futures related) [174].	All trades may be treated as block trades [175].	

[162] This approach would be predicated on expected differing liquidity and notional size distributions between other commodity swaps with differing tenors.

[163] These additional product types would allow the Commission to set an appropriate minimum block size for a swap category based on a distribution of transactions with more similar underlying physical commodity market characteristics. For example, swaps utilizing a reference price based on an aluminum or iron underlier would be included in the same ''other base metal'' swap category. Under this variation to the proposed approach, there could be additional specific product types corresponding to specific commodities not included in proposed appendix D to part 43 (*e.g.,* aluminum or iron).

[164] An ''HHI score'' would be defined as the sum of the squared percentages, in whole numbers, of relative positions or transactions on the long or short side of a grouping of swap positions or transactions during a specified period. This alternative approach would be based on the distribution of percentages of positions or transactions held or executed by non-affiliated market participants on the long and short side of a swap market. In addition, this alternative approach would be predicated on the notion that reduced market concentration is indicative of a degree market liquidity depth that warrants greater transparency because of reduced liquidity concerns, as well as reduced concerns with the anonymity of transactions in such swap categories.

[165] This figure would be the simple average of the HHI score on the short and long sides of a swap market based on the concentration of open interest on either side of such a market.

[166] The Commission may consider applying a methodology resulting in less relative transparency to concentrated swap categories (*e.g.,* a 50-percent notional amount calculation).

PROPOSED APPROACH—Continued

Asset class	Swap category criteria	Initial implementation period	Post-initial implementation period [167]
Other Commodity	By economically-related Appendix B to part 43 contract if the swap is (1) futures related and (2) the relevant futures contract is subject to DCM block trade rules [176].	Based on DCM futures block size by swap category [177].	
	By economically-related Appendix B to part 43 contract if the swap is: (1) futures related and (2) the relevant futures contract is *not* subject to DCM block trade rules [178].	No trades may be treated as blocks [179].	
	By economically-related Appendix B to part 43 contract if the swap is (1) a listed natural gas or electricity swap contract and (2) the relevant Appendix B contract is not futures related [180].	Appropriate minimum block size equal to $25 million [181].	
	By swaps that are economically related to the list of 18 contracts listed in § 43.6(b)(5)(ii) [182].	Based on DCM futures block size by swap category [183].	
	By Appendix D to part 43 commodity group, for swaps not economically related to a contract listed in Appendix B to part 43 or to the list of 18 contracts listed in § 43.6(b)(5)(ii) [184].	All trades may be treated as block trades [185].	
Equity	All equity swaps [186]	No trades may be treated as blocks. [187]	

Request for Comment

Q29. The Commission requests general comment regarding its proposed methodologies to determine appropriate minimum block sizes in both implementation periods.

Q29.a. In the post-initial period, should the Commission consider using the previous period's appropriate minimum block size or one of the alternative calculation methodologies (as discussed in Q35 below) if the calculated appropriate minimum block size during the current period is extraordinarily high or low, or where the number of transactions in a swap category is small (*e.g.,* less than 60 transactions each six month period)?

Q30. Should the updates of post-initial appropriate minimum block sizes and related calculations occur at regular periods of time? If so, is the proposed time frame for updating the appropriate minimum block sizes sufficient? [188]

Q31. During the initial period, should the Commission update the appropriate minimum block sizes based on the methodologies or alternatives described in this proposed rulemaking?

1. Methodology for Determining the Appropriate Minimum Block Sizes in the Interest Rate and Credit Asset Classes

The Commission is proposing to use a 67-percent notional amount calculation to determine initial and post-initial appropriate minimum block sizes for swaps in the interest rate and credit asset classes pursuant to proposed §§ 43.6(c)(1) and 43.6(e)(1).[189] The 67-percent notional amount calculation is a methodology under which the Commission would: (step 1) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated ;[190] (step 2) convert to the same currency or units and use a ''trimmed data set;'' [191] (step 3) determine the sum of the notional amounts of swaps in the trimmed data set; (step 4) multiply the sum of the notional amount by 67 percent; (step 5) rank order the observations by notional amount from least to greatest; (step 6) calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in step 4; (step 7) select the notional amount

[167] This post-initial implementation period would commence at a minimum of one year after the initial period. Thereafter, the Commission would determine appropriate minimum block sizes a minimum of once annually. *See* proposed § 43.6(f)(1).

[168] *See* proposed § 43.6(b)(1).

[169] *See* proposed § 43.6(c)(1).

[170] *See* proposed § 43.6(f)(2).

[171] *See* proposed § 43.6(b)(2).

[172] *See* proposed § 43.6(b)(4)(i).

[173] *See* proposed § 43.6(e)(1).

[174] *See* proposed § 43.6(b)(4)(ii).

[175] *See* proposed § 43.6(e)(2).

[176] *See* proposed § 43.6(b)(5)(i).

[177] *See* proposed § 43.6(e)(1).

[178] *See* proposed § 43.6(b)(5)(i).

[179] *See* proposed § 43.6(e)(3).

[180] *See* proposed § 43.6(b)(5)(i).

[181] *See* proposed § 43.6(e)(3).

[182] *See* proposed § 43.6(b)(5)(ii).

[183] *See* proposed § 43.6(e)(1).

[184] *See* proposed § 43.6(b)(5)(iii) and the product types groupings listed in proposed appendix D to part 43.

[185] *See* proposed § 43.6(e)(2).

[186] *See* proposed § 43.6(b)(3).

[187] *See* proposed § 43.6(d).

[188] *See* proposed § 43.6(f)(1).

[189] Proposed § 43.6(c)(1) describes the 67-percent notional amount calculation. Proposed § 43.6(e)(1) provides the provisions relating to the methodology for determining appropriate minimum block sizes during the initial period for swaps in the interest rate and credit asset classes, inter alia.

[190] *See* note 109 supra for the definition of publicly reportable swap transaction. Since the Commission is proposing to determine all appropriate minimum block sizes based on reliable data for all publicly reportable swap transactions within a specific swap category, the Commission does not view the fact that more than one SDR may collect such data as raising any material concerns.

[191] *See* proposed amendment to § 43.2 and the discussion infra in this section.

associated with that observation; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits [192]; and (step 9) set the appropriate minimum block size at the amount calculated in step 8. An example of how the Commission would apply this proposed methodology is set forth in section VII of this Further Proposal.

There were three swap categories in the interest rate and credit asset classes, which contained less than 30 transaction records that would meet the definition of publicly reportable swap transaction. For these swap categories, the Commission is proposing to use the lowest appropriate minimum block size for their respective asset classes based on the respective data set. The three swap categories are: (1) Interest rate swap category major currency/30 years +; (2) interest rate swap category non-major currency/30 years +; and (3) CDS index swap category 350 bps/six-to-eight years and six months. If the Commission were to use the proposed 67-percent notional calculation method, then two of the three swap categories would have resulted in appropriate minimum block sizes higher than those proposed. The remaining swap category contained no data.

The proposed 67-percent notional amount calculation is intended to ensure that within a swap category, approximately two-thirds of the sum total of all notional amounts are reported on a real-time basis. Thus, this approach would ensure that market participants have a timely view of a substantial portion of swap transaction and pricing data to assist them in determining, inter alia, the competitive price for swaps within a relevant swap category. The Commission anticipates that enhanced price transparency would encourage market participants to provide liquidity (*e.g.,* through the posting of bids and offers), particularly when transaction prices moves away from the competitive price. The Commission also anticipates that enhanced price transparency thereby would improve market integrity and price discovery, while also reducing information asymmetries enjoyed by market makers in predominately opaque swap markets.[193]

In the Commission's view, using the proposed 67-percent notional amount calculation also would minimize the potential impact of real-time public reporting on liquidity risk. The Commission views this calculation methodology as an incremental approach to achieve real-time price transparency in swap markets. The Commission believes that its methodology represents a more tailored and incremental step (relative to the approach set out in the Initial Proposal) towards achieving the goal of ''a vast majority'' of swap transactions becoming subject to real-time public reporting.[194]

As noted above, CEA section 2(a)(13)(E)(iv) directs the Commission to take into account whether the public disclosure of swap transaction and pricing data ''will materially reduce market liquidity.'' [195] If market participants reach the conclusion that the Commission has set appropriate minimum block sizes for a specific swap category in a way that will materially reduce market liquidity, then those participants are encouraged to submit data in support their conclusion. In response to such a submission, the Commission has the legal authority to take action by rule or order to mitigate the potential effects on market liquidity with respect to swaps in that swap category. In addition, if through its own surveillance of swaps market activity, the Commission becomes aware that an appropriate minimum block size would reduce market liquidity for a specific swap category, then under those circumstances the Commission may exercise its legal authority to take action by rule or order to mitigate the potential effects on marketing liquidity with respect to swaps in that swap category.

As referenced above, the Commission is proposing to amend § 43.2 of the Commission's regulations to define the term ''trimmed data set'' as a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of ten (Log_{10}), computing the mean, and excluding transactions that are beyond four standard deviations above the mean. Proposed § 43.6(c) uses this term in connection with the calculations that the Commission would undertake in determining appropriate minimum block sizes and cap sizes.

The Commission is proposing to use a trimmed data set since it believes that removing the largest transactions, but not the smallest transactions, may provide a better data set for establishing the appropriate minimum block size, given that the smallest transactions may reflect liquidity available to offset large transactions. Moreover, in the context of setting a block trade level (or large notional off-facility swap level), a method to determine relatively large swap transactions should be distinguished from a method to determine extraordinarily large transactions; the latter may skew measures of the central tendency of transaction size (*i.e.,* transactions of usual size) away from a more representative value of the center.[196] Therefore, trimming the data set increases the power of these statistical measures.

Request for Comment

Q32. Please provide specific comment regarding the Commission's proposed approach to determine appropriate minimum block sizes for swaps in the interest rates and credit asset classes.

Q32.a. Is the Commission's proposed approach reasonable with respect to those swap categories for which there were less than 30 transaction records? Is there another appropriate minimum block size (either higher or lower) that the Commission should use for these swap categories? If so, then why? Should the Commission continue to use this approach in the post-initial period by determining whether there are less than 30 transaction records within a six-month period?

Q33. As a variation of the proposed approach, should the Commission use a 50-percent notional amount calculation methodology for determining the appropriate block sizes for these asset classes? If so, please explain why. If so, what affects would a 50-percent notional amount calculation have on the costs imposed on, and the benefits that would inure to, market participants and registered entities? [197] Are there some

[192] For example, if the observed notional amount is $1,250,000, the amount should be increased to $1,300,000. This adjustment is made to assure that at least 67 percent of the total notional amount of transactions in a trimmed data set are publicly disseminated in real time.

[193] The proposed calculation stands in contrast to the proposed 95th percentile-based distribution test set out in the Initial Proposal. *See* the discussion *supra* in section I.B. of this Further Proposal.

[194] *See* note 83 *supra.* This phased-in approach seeks to improve transparency while not having a negative impact on market liquidity.

[195] 7 U.S.C. 2(a)(13)(E)(iv).

[196] A measure of central tendency, also known as a measure of location, in a distribution is a single value that represents the typical transaction size. Two such measures are the mean and the median. For a general discussion of statistical methods, *see e.g.,* Wilcox, R. R., Fundamentals of Modern Statistical Methods (Springer 2d ed. 2010), (2010).

[197] The Commission is actively considering the use of a 50-percent notional amount calculation methodology in the initial and/or post-initial periods. The rule text for the 50-percent notional amount calculation would be nearly identical to proposed § 43.6(c)(1) and (2), except for the insertion of ''50-percent'' where appropriate.

parts of the swaps market for which 50-percent notional amount calculation would be a more appropriate methodology (*e.g.,* actively-traded swap categories in the interest rates and credit asset classes)? The following two charts compare the proposed initial appropriate minimum block sizes (using the 67-percent notional amount calculation) for swaps in the interest rate and credit asset classes with appropriate minimum block sizes that would result if the Commission were to use the 50-percent notional amount calculation.[198]

COMPARISON OF INITIAL APPROPRIATE MINIMUM BLOCK SIZES

[Interest rate swaps]

Currency group	Tenor greater than	Tenor less than or equal to	50% Notional (in millions)	67% Notional (in millions)
Super-Major	.....	Three months (107 days)	3,800	6,400
Super-Major	Three months (107 days)	Six months (198 days)	1,200	1,900
Super-Major	Six months (198 days)	One year (381 days)	1,100	1,600
Super-Major	One year (381 days)	Two years (746 days)	460	750
Super-Major	Two years (746 days)	Five years (1,842 days)	240	380
Super-Major	Five years (1,842 days)	Ten years (3,668 days)	170	290
Super-Major	Ten years (3,668 days)	30 years (10,973 days)	120	210
Super-Major	30 years (10,973 days)	.....	67	130
Major	.....	Three months (107 days)	700	970
Major	Three months (107 days)	Six months (198 days)	440	470
Major	Six months (198 days)	One year (381 days)	220	320
Major	One year (381 days)	Two years (746 days)	130	190
Major	Two years (746 days)	Five years (1,842 days)	88	110
Major	Five years (1,842 days)	Ten years (3,668 days)	49	73
Major	Ten years (3,668 days)	30 years (10,973 days)	37	50
Major	30 years (10,973 days)	.....	15	22
Non-Major	.....	Three months (107 days)	230	320
Non-Major	Three months (107 days)	Six months (198 days)	150	240
Non-Major	Six months (198 days)	One year (381 days)	110	160
Non-Major	One year (381 days)	Two years (746 days)	54	79
Non-Major	Two years (746 days)	Five years (1,842 days)	27	40
Non-Major	Five years (1,842 days)	Ten years (3,668 days)	15	22
Non-Major	Ten years (3,668 days)	30 years (10,973 days)	16	24
Non-Major	30 years (10,973 days)	.....	15	22

COMPARISON OF INITIAL APPROPRIATE MINIMUM BLOCK SIZES

[Credit default swaps]

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional	67% Notional
Less than or equal to 175	.....	Two years (746 days)	320	510
Less than or equal to 175	Two years (746 days)	Four years (1,477 days)	200	300
Less than or equal to 175	Four years (1,477 days)	Six years (2,207 days)	110	190
Less than or equal to 175	Six years (2,207 days)	Eight years and six months (3,120 days).	110	250
Less than or equal to 175	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	130	130
Less than or equal to 175	Twelve years and six months (4,581 days).	.....	46	110
Greater than 175 and less than or equal to 350.	.....	Two years (746 days)	140	210
Greater than 175 and less than or equal to 350.	Two years (746 days)	Four years (1,477 days)	82	130
Greater than 175 and less than or equal to 350.	Four years (1,477 days)	Six years (2,207 days)	32	36
Greater than 175 and less than or equal to 350.	Six years (2,207 days)	Eight years and six months (3,120 days).	20	26
Greater than 175 and less than or equal to 350.	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	26	64
Greater than 175 and less than or equal to 350.	Twelve years and six months (4,581 days).	.....	63	120
Greater than 350	.....	Two years (746 days)	66	110
Greater than 350	Two years (746 days)	Four years (1,477 days)	41	73
Greater than 350	Four years (1,477 days)	Six years (2,207 days)	26	51
Greater than 350	Six years (2,207 days)	Eight years and six months (3,120 days).	13	21

[198] Using the ODSG data for interest rate swaps, the Commission notes that the proposed 67-percent notional amount calculation would result in 94 percent of trades being reported in real-time, compared with 86 percent of trades that would be reported in real-time under the alternative 50-percent notional amount calculation.

Using the ODSG data for CDS, the Commission notes that the proposed 67-percent notional amount calculation would result in 94 percent of trades being reported in real-time, compared with 85 percent of trades that would be reported in real-time under the alternative 50-percent notional amount calculation.

COMPARISON OF INITIAL APPROPRIATE MINIMUM BLOCK SIZES—Continued

[Credit default swaps]

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional	67% Notional
Greater than 350	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	13	21
Greater than 350	Twelve years and six months (4,581 days).		41	51

Q34. As another variation of the proposed methodology, should the Commission change specific aspects of its methodology?

Q34.a. For example, should the Commission define the term ''trimmed data set'' to exclude greater or fewer extremely large transactions from the data set used to determine appropriate minimum block sizes? Or, should the term be defined to exclude transactions that are three or five standard deviations beyond the mean? If so, should this be done for all asset classes?

Q34.b. Should the Commission use another method for excluding outliers?

Q35. As an alternative to the proposed 67-percent notional amount calculation methodology, should the Commission use any of the following in the initial and/or post-initial periods:

Q35.a. As an alternative approach, should the Commission determine appropriate minimum block sizes based on a measure of market depth and breadth? Market depth and breadth is one of several approaches in which the Commission could preserve market liquidity.[199] Under this alternative, market depth and breadth would be determined using the following methodology: (step 1) Identify swap contracts with pre-trade price transparency within a swap category [200]; (step 2) calculate the total executed notional volumes for each swap contract in the set from step 1 and calculate the sum total for the swap category over the look back period; (step 3) collect a market depth snapshot [201] of all of the bids and offers once each minute for the pre-trade price transparency set of contracts identified in step 1 [202]; (step 4) identify the four 30-minute periods that contain the highest amount of executed notional volume each day for each contract of the pre-trade price transparency set identified in step 1 and retain 120 observations related to each 30-minute period for each day of the look-back period [203]; (step 5) determine the average bid-ask spread over the look-back period of one year by averaging the spreads observed between the largest bid and executed offer for all the observations identified in step 3; (step 6) for each of the observations 120 observations determined in step 4, calculate the sum of the notional amount of all orders collected from step 3 that fall within a range,[204] calculate the average of all of these observations for the look-back period and divide by two; (step 7) to determine the trimmed market depth, calculate the sum of the market depth determined in step 6 for all swap contracts within a swap category; (step 8) to determine the average trimmed market depth, use the executed notional volumes determined in step 2 and calculate a notional volume weighted average of the notional amounts determined in step 6; (step 9) using the calculations in steps 7 and 8, calculate the market breadth based on the following formula—market breadth = averaged trimmed market depth + (trimmed market depth − average trimmed market depth) × .75; (step 10) set the appropriate minimum block size equal to the lesser of the values from steps 8 and 9. Would the Commission have to establish special swap categories for this approach? Would the collection of snapshots from a central limit order book be too burdensome (*i.e.,* costly and time consuming) for DCMs and SEFs? What are the costs and benefits of adopting this approach?

Q35.b. Should the Commission use a confidence interval test for calculating the appropriate minimum block sizes for these asset classes?

The confidence interval test calculates the minimum notional value as the point where the publicly disseminated average notional size is within the 95-percent confidence interval using the following process: (step 1) Select the swap transaction data for a specific swap category; (step 2) convert to the same currency or units and determine the transaction distribution of notional amounts using the natural logarithm and trimmed data set for the swap category [205]; (step 3) calculate the average notional size and the 95-percent confidence interval around this average [206]; (step 4) drop the largest

[199] Although this alternative approach presents several limitations (*e.g.,* the impact of collecting market depth data on a regular basis), the Commission considers this alternative to be a viable option to its proposed approach discussed above.

[200] Swap contracts would be determined to have pre-trade price transparency if they have electronically displayed and executable bids and offers along with displayed available volumes for execution.

[201] CEA sections 4g(b), 4g(d), 5(d)(1), 5(d)(10) and 5(d)(18) authorize the Commission to request this data from a DCM. CEA sections 5h(f)(5) and 5h(f)(10) authorize the Commission to request this data from a SEF. The Commission would request such data as part of a special call process.

[202] Note that this is a snapshot observation for a single moment in time. The Commission is not specifying which second within the minute would be analyzed when taking a snapshot of market depth.

[203] These periods may vary from day to day and from contract to contract and would be defined on the 48 30-minute periods set to the top and bottom of each hour of each day (*e.g.,* 1–1:29 p.m. 1:30–1:59 p.m., etc.). In instances when tie occurs in identifying the four 30-minute periods based on executed notional volumes, preference would first be given to the period with the largest total notional volume for the largest bid and offer. If a tie still results, then preference would be given to the period with the smallest difference in bids minus asks. Lastly, if a tie is still remains, then the period of time after and nearest to 12 p.m. New York time would be selected.

[204] The range would be determined by the average of the largest bid and offer for that observation plus or minus three time the average bid-ask spread (as determined in step 5) for all 120 observations.

[205] In practice, the natural logarithm of the notional value is preferred over the nominal value to reduce the effect of skewness on sample statistics. In addition to classical statistical methods, the calculation of the confidence interval may be improved by using ''bootstrapping'' methods to estimate the distribution of the average notional trade size. *See generally,* Bradley Efron, Bootstrap Methods: Another Look at the Jackknife, Ann. Statist. Vol. 7, No. 1 (1979), 1–26, *http://projecteuclid.org/DPubS?service=UI&version=1.0&verb=Display&handle=euclid.aos/1176344552* (last visited Jan. 31, 2012).

[206] The confidence interval test assumes sufficient data is available in a swap category such that a normal distribution is a good approximation to compute an interval estimate. To the extent that the actual distribution diverges significantly from a normal distribution, the interval estimate may not reflect the probability at the desired (95 percent) confidence interval. In which case, other methods such as ''bootstrapping'' may be necessary to compute the confidence intervals around the full sample average notional size. The Commission notes the ODSG data sets were not normally distributed, but were nearly symmetric after trimming. Further, according to a TABB Group survey, many market participants expected the average notional transaction size to decline, which would have implied change in the distribution. *See* the presentation of Kevin McPartland, Principal, Tabb Group, CFTC Technology Advisory

remaining transaction from the distribution [207]; (step 5) conditional on the full-sample 95-percent confidence interval, calculate the sample average notional size using the data resulting from step 4; (step 6) if the sample average notional size is not outside of the 95-percent confidence interval, repeat steps 4 and 5 until it is just outside of the 95-percent confidence interval; (step 7) once the sample average notional size is outside the 95-percent confidence interval, set the minimum notional value equal to the notional value; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (step 9) set the appropriate minimum block size equal to the largest transaction of the distribution for which the sample average notional size was still within the 95-percent confidence interval. What are the costs and benefits associated with using this alternative approach?

Q35.c. Should the Commission use a stability test that makes use of ''CUSUM'' and/or ''CUSUM of Square'' methods? [208] The Commission would define the stability test calculation as a process whereby the Commission would: (step 1) In the post-initial period, select swap transaction data for a specific swap category over a specified period (*e.g.,* a rolling window of three years of such data at one year intervals) [209]; (step 2) trim the extraordinarily large notional transactions from the swap transaction data by converting the data series into natural logarithm value equivalents, determining the mean, and excluding transactions that are beyond four standard deviations above the mean; (step 3) reposition the largest transactions back into a time-ordered trade sequence based on the reporting delay using one-percent sample increments of the largest transactions; (step 4) measure stability of this repositioning by calculating the fraction of observations violating the 95-percent confidence interval in the ''CUSUM'' and ''CUSUM of Squares'' methods [210]; and (step 5) identify the increment that causes the least change in stability of the average notional trade size compared to a non-repositioned sequence. The notional size cutoff for this increment would become the appropriate minimum block size in that swap category. If the test above does not produce a disruption in the stability of the average notional trade size, then the Commission would use the 67-percent notional amount calculation methodology. What are the costs and benefits associated with using this alternative approach?

Q35.d. Should the Commission utilize a percentile-based methodology to determine appropriate minimum block sizes that would focus on the number of trades? [211]

Q35.e. Should the Commission use a measure of average volume in a given time period [212] as a proxy for liquidity in order to calculate the appropriate minimum block size? The Commission is considering two alternatives for calculating appropriate minimum block size using this methodology: (1) Setting the initial appropriate minimum block size using daily volume when time-stamped transactions are not available; or (2) setting the post-initial block sizes once time-stamped transactions become available.[213] The methodology for setting initial appropriate minimum block size in the swap categories in the interest rate and credit asset classes would use the ODSG data sets to calculate the minimum notional value for a block using the following procedure for a given swap category: (step 1) Sum the notional volume of all trades within the swap category for each day for the ODSG data set; (step 2) calculate an estimate of the average volume in a 15-minute time period for each day by dividing the sum from step 1 by 32 (there are 32, 15-minute increments in an 8-hour time period, which is the presumed active trading period) [214]; (step 3) calculate the daily average for the ODSG data set by summing each day's estimated 15-minute average volume calculated in step 2 and dividing it by the total number of business days in the ODSG data set; and (step 4) multiply the daily average of the 15-minute average volume in time (''AVIT'') by a factor of two to determine the minimum block size.

Q35.f. As a variation of the AVIT methodology, should the Commission instead examine the volume of a portion of trades? For example, should the Commission examine volumes during the most active periods of a day, month or quarter? Or should the Commission only examine volume associated with a net change in position by counterparties during the delay period or the end of the day?

Q35.g. Should the Commission consider using a combination of the proposed and alternative tests as part of a composite test? [215] A composite test

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Committee Meeting, Dec. 13, 2011, available at *http://www.cftc.gov/PressRoom/Events/opaevent_tac121311.*

[207] The Commission is also considering dropping transactions in one-percent increments until the sample average moves outside the 95-percent confidence interval. The Commission would then drop transactions within the last one-percent increment until the actual transaction is found that moves the sample mean outside of the confidence interval.

[208] Brown, R.L., J. Durbin, and J.M. Evans, ''Techniques for Testing the Constancy of Regression Relationships over Time,'' Journal of the Royal Statistical Society, B, 37, 149–163 (1975).

[209] If the Commission were applying this methodology to the initial period, then a rolling three-year window of data, beginning with a minimum of one year's worth of data, may not be available. In that case, the Commission would use the ODSG data where applicable.

[210] As with the confidence interval test, this test assumes a normal distribution, and as such, will follow similar procedures to those outlined in note 206 supra.

[211] For example, the Commission would order all publicly reportable swap transactions in a swap category by notional amount. After ordering these swap transactions, the Commission would set the appropriate minimum block size at the notional amount that corresponds to the 80th percentile. *See* note 15 *supra* for a discussion of the distribution test, which was proposed in the Initial Proposal.

[212] The Commission is considering using a measure of the average volume in time (''AVIT'') to determine the minimum block size since liquidity may not be directly observable in the market and historical trading volume is one indicator of (or proxy for) liquidity. Incorporating a measure of liquidity into the calculation of block sizes is important given that section 2(a)(13)(E)(iv) of the CEA requires the Commission to take into account whether public disclosure will materially reduce market liquidity. Moreover, calculating the AVIT for a 15-minute time period may serve as a proxy for the expected volume that could normally be transacted in the time between a block trade being executed and being publicly reported. *See* 7 U.S.C. 2(a)(13)(E)(iv).

[213] The transactions in the data sets for the interest rate and credit asset classes which the Commission is using in the initial period are not time stamped. However, SDRs will receive time-stamped swap transactions under real time reporting rules, which will then be remitted to the Commission.

[214] In the post-initial period when time-stamped transaction data will be available, the Commission could use a calculation based on actual transaction times. For example, the average volume could be calculated for each clock hour (*e.g.,* 8:00–:859 a.m.) in each business day by summing the notional sizes of all transactions for a 12-month time period in each clock hour and dividing by the total number of business days. Thereafter, the Commission would calculate the 15-minute volume.

[215] The Commission believes a composite test may increase the flexibility (*i.e.,* robustness) of setting minimum block sizes by using methods which are more appropriate in certain circumstances. For example, the Commission recognizes that certain methods may have limitations, including statistical breakdown points given certain distributions of transactions. Hence, it may be that no single test optimally sets block sizes under all distributions of transactions. A composite test may be more appropriate than any single test in setting block sizes across the wide variety of products that comprise the various swap categories and asset classes. In the event sample sizes are small, methods such as the social size, 50-percent distribution test, and AVIT may not produce results

Continued

would combine a number of methods to determine potential block size and would include switching rules to select the appropriate block size from among the methods. An example of a simple switching rule is to select the largest result from among a number of alternative methods. For example, a general composite test to calculate the block size would consist of setting the appropriate minimum block size to the greater of the results using (a) 50-percent distribution test,[216] (b) AVIT method and (c) social size. In this example, three methods are used and a simple switching rule would use the largest value resulting from the three methods. The example composite test ensures that a minimum block size would be equal to the larger of the three component tests, and thus ensures a minimal acceptable level of transparency.[217] The Commission recognizes that alternative switching rules may be more appropriate, such as taking the lower of two or more individual tests or taking the average of two or more tests to produce the appropriate minimum block size, and seeks comments on the use of alternative switching methods. The Commission invites comments on the use of a composite test as an alternative to a single method and on whether a composite test should be used to determine the appropriate minimum block size. If so, which methods should be included and what switching rule(s) should be used? Why would such an alternative be appropriate?

Q35.h. Should the Commission use a methodology that takes into consideration the impact of trade sizes on prices in the swap markets while determining post-interim minimum block sizes?

Q35.i. Should the Commission use a variation of the multiple test, which was proposed in the Initial Proposal?[218] For example, should the Commission remove one or more of the components of the test (*i.e.,* should the Commission remove the mean, median or mode)? Should the components be weighted? Should the multiplier be increased or decreased?

2. Treatment of Swaps Within the Equity Asset Class

The Commission is proposing under § 43.6(d) that all swaps in the equity asset class would not qualify for treatment as a block trade or large notional off-facility swap (*i.e.,* these swaps would not be subject to a time delay under part 43). As noted above, the Commission is proposing this approach based on: (1) The existence of a highly liquid underlying cash market; (2) the absence of time delays for reporting block trades in the underlying equity cash market; (3) the small relative size of the equity index swaps market relative to the futures, options and cash equity index markets; and (4) the Commission's goal to protect the price discovery function of the underlying equity cash market and futures market by ensuring that the Commission does not create an incentive to engage in regulatory arbitrage among the cash, swaps, and futures markets.

Request for Comment

Q36. Please provide specific comments regarding the Commission's proposed approach to disallow swaps in the equity asset class from being eligible for treatment as a block trade or large notional off-facility swap.

Q37. In the alternative, should the Commission employ a phased-in approach with respect to swaps in the equity asset class, whereby during the initial period all swaps in this asset class would be eligible for treatment as block trades or large notional off-facility swaps?

Q37.a. If so, then on what basis would the Commission follow this alternative approach?

Q38. As a second alternative, should the Commission establish post-initial appropriate minimum block sizes for swaps in the equity asset class using the 50-percent notional amount calculation?

Q38.a. If not a 67-percent notional amount calculation, then what other calculation methodology could the Commission adopt? For example, the Commission could establish appropriate minimum block sizes for swaps in the equity asset class at 0.002 percent of average market capitalization for publicly-listed equity indexes, and at some lower threshold (*e.g.,* 0.00175 percent) for custom equity indexes in recognition of possible marginal increased liquidity risk associated with these indexes.

Q38.b. Should the Commission establish post-initial appropriate minimum block sizes for swaps in the equity asset class using one of the alternative methodologies discussed in Q35 above?

Q39. As a third alternative, should the Commission adopt and then increase the 67-percent notional amount calculation over time? If so, why? For example, for each year after the implementation of post-initial appropriate minimum block sizes, should the notional amount calculation threshold increase by five or ten percentage points until a maximum of 95-percent notional amount is reached? Is this alternative appropriate for swaps in other asset classes?

Q40. As a fourth alternative, should the Commission apply an approach that uses a different calculation methodology based on the underlying liquidity in a swap category to determine the calculation methodology used to determine the appropriate minimum block size? If so, what measures of liquidity should the Commission use to determine appropriate categorization of swap categories into low, medium, or high liquidity swaps within the equity asset class? Is this alternative appropriate for swaps in other asset classes?

Q40.a. Would a 33, 50 and 67-percent notional amount calculation be appropriate for low, medium, or high liquidity swap categories respectively?

3. Methodologies for Determining the Appropriate Minimum Block Sizes in the FX Asset Class

The Commission is proposing to use different methodologies for the initial and post-initial periods to determine appropriate minimum block sizes for swaps categories in the FX asset class. The Commission's proposed approach is premised on the absence of actual market data on which to determine appropriate minimum block sizes in the initial period. Subsection a. below includes a discussion of the initial period methodology. Subsection b. below includes a discussion of the post-initial period methodology.

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that adequately differentiate large swap transactions in need of block consideration. In addition, the 95% confidence interval test could be included in a composite test to ensure that the level of transparency provided by the real-time publicly reported tape is representative of the actual data.

[216] *See* note 15 *supra.*

[217] For example, shredding by market participants may cause a marked decrease in the average notional size of transactions as a participant executes numerous smaller transactions as opposed to a single large transaction. It is possible that even as total notional volume in a market increases, and by assumption liquidity increases, measures of average trade size fall, causing calculations based on the notional distribution of transactions to suggest lower block sizes. If shredding becomes standard practice in a market, then using only the social size or the 67-percent notional amount calculation method would result in low minimum block sizes which would not reflect the true size of a transaction and would not adequately determine what constitutes ''large notional swap transactions'' (i.e., block trades) in particular markets. Section 2(a)(13)(E)(ii) of the CEA requires that the Commission ''specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts.'' 7 U.S.C. 2(a)(13)(E)(ii).

[218] *See* note 16 supra for a description of the multiple test.

a. Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the FX Asset Class

During the initial period, the Commission is proposing under § 43.6(e)(1) to set the appropriate minimum block sizes for swaps in the FX asset class based on whether such swap is economically related to a futures contract. For futures-related swaps in the FX asset class, proposed § 43.6(e)(1) provides that the Commission would establish the appropriate minimum block sizes for futures-related swaps [219] based on the block trade size thresholds set by DCMs for economically-related futures contracts.[220] The Commission has set forth the initial appropriate minimum block sizes in proposed appendix F to part 43 of the Commission's regulations.[221] The Commission anticipates that this approach would encompass the most liquid FX swaps and instruments, including most super-major currencies combinations, as well as most super-major and major currencies combinations. This approach also would further encompass many important super-major-and-major combinations and super-major-and-non-major currency combinations.[222] The Commission believes that this proposed approach is appropriate during the initial period in the absence of actual swap data for two reasons. First, the Commission aims to deter regulatory arbitrage opportunities with respect to swaps that are economically related to futures contracts. In the Commission's experience, futures and swap contracts that are economically related form one part of a larger derivatives market and, as such, should be subject to consistent block trade regulations (*i.e.,* time delays, methodologies for calculating block trade sizes, etc.) in order to minimize the potential for regulatory arbitrage.

Second, this proposed approach during the initial period would draw upon the experience of DCMs in considering the potential impacts on liquidity risk that enhanced transparency may cause in connection with futures contract execution.[223] The Commission understands that DCMs have set block sizes primarily in consideration of the objectives of enhancing pre-trade transparency and reducing liquidity risk.[224] The Commission notes that DCMs are required to set block sizes for futures in compliance with relevant core principles (including Core Principle 9) [225] and part 40 of the Commission's regulations.[226]

Swap contracts and futures contracts that are economically related—as defined by the Commission in the proposed amendment to § 43.2—are economic substitutes for the purpose of determining an appropriate minimum block size.[227] Where swap positions are economically related to futures positions, parties would likely have an incentive to conduct regulatory arbitrage by trading swaps. This incentive is created because swap positions provide counterparties with the ability to keep the nature of their trade confidential. Accordingly, the Commission is proposing to adopt the same block sizes established by DCMs in futures markets for futures-related swaps in order to ensure consistent levels of market transparency across futures and swaps markets that are economically related.

For non-futures related swaps in the FX asset class in the initial period of implementation, the Commission is proposing under § 43.6(e)(2) that all non-futures-related swaps in the FX asset class would qualify to be treated as block trades or large notional off-facility swaps (*i.e.,* these swaps would be subject to a time delay under part 43 of the Commission's regulations). The Commission expects that this provision only would apply to the most illiquid swaps.

Request for Comment

Q41. Please provide specific comments regarding the Commission's proposed approach to prescribe initial appropriate minimum block sizes for swaps in the FX asset class.

Q41.a. As a variation of the proposed approach, should the Commission use a ''triangulated'' approach for setting specific appropriate minimum block sizes in the initial period for FX swaps and instruments involving pairings of currencies that are not included in a single FX futures contract but whose currency legs can be indirectly paired through a common FX futures contract pairing with a third currency? [228] That is, the Commission would infer an appropriate minimum block size for pairings not subject to a common block size by comparing the DCM block sizes that apply to each pair with respect to the U.S. dollar and choosing the lower of the two block sizes.[229] This approach would enable the Commission to prescribe an appropriate minimum block size for all pairings involving all combinations of super-major and major currencies (except those involving the Danish krone).

Q42. As an alternative to the proposed approach, should the Commission treat all FX swaps and instruments in the same manner as it is proposing to treat all equity swaps under § 43.6(d) (*i.e.,* all FX swaps and instruments would not be subject to a time delay and as a result

[219] The Commission is proposing to amend § 43.2 to define ''futures related swap'' to mean a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract.

[220] For example, if swap A is economically related to futures F, and futures F is subject to the block trade rules of a DCM that applies at a notional amount of $1 million, then swap A would qualify for treatment as a block trade or large notional off-facility swap if the notional amount of swap A exceeds $1 million.

[221] In situations when two or more DCMs offer for trading futures contracts that are economically related, the Commission has selected the lowest applicable non-zero futures block size as the initial appropriate minimum block size. The Commission believes that this approach would reduce the chance that the appropriate minimum block size established by the Commission in the initial period would have an unintended adverse effect on market liquidity for the relevant swap category.

[222] *See* Q18 supra, which sets forth an alternative approach to proposed swap categories based on unique currency combinations.

[223] The Commission notes further that DCMs historically have had the appropriate incentive to balance these considerations because they benefit from liquidity generally (*i.e.,* commissions from transaction volume in block and non-block trades provides DCMs with their primary source of revenue).

[224] The Commission is of the view that the pre-trade and post-trade contexts are sufficiently similar in that policies directed at balancing transparency and liquidity concerns in a pre-trade context are relevant in considering what an appropriate balance is in the post-trade context. In the pre-trade context, block sizes are set near or at the point where a trader would be able to offset the risk of an equally large transaction without bearing liquidity risk.

[225] Core Principle 9 of section 5(d) of the CEA provides that a DCM ''shall provide a competitive, open, and efficient market and mechanism for executing transactions * * *.'' 7 U.S.C. 7(d)(9). Current appendix B to part 38 of the Commission's regulations provides that in order to maintain compliance with core principle 9, DCMs allowing block trading ''should ensure that the block trading does not operate in a manner that compromises the integrity of prices or price discovery on the relevant market.'' *See* 17 CFR 38 app. B.

[226] Section 40.6 of the Commission's regulations include a process by which registered entities may certify rules or rule amendments that establish or change block trade sizes for futures contracts. *See* 17 CFR 40.6.

[227] Correlations among all members of a group of economically related swaps or futures contracts may vary, for the purpose of determining appropriate minimum block sizes. As a general matter, however, such swaps correlate closely in price. *See* § 36.3 of the Commissions regulations.

[228] For example, futures based on Canadian dollar (CAD) and Australian dollar (AUD) currency pairings are not offered on a DCM while Canadian dollar/U.S. dollar DCM futures contracts and Australian dollar/U.S. dollar futures contracts are offered on a DCM. Therefore, the Canadian dollar and Australian dollar can be indirectly paired through their common relationship with U.S. dollar-linked FX futures.

[229] For example, the Canadian dollar/U.S. dollar DCM futures contract is subject to a block size of 10,000,000 CAD and the Australian dollar/U.S. dollar is subject to a block size of 10,000,000 AUD. The Commission would base the appropriate minimum block size for AUD/CAD swaps on the lower of 10,000,000 CAD and 10,000,000 AUD.

would have to be publicly disseminated as soon as technological practicable)? The Commission would premise this alternative on: (1) The existence of very liquid FX spot, futures and forwards markets; and (2) the absence of a centralized FX market structure.

Q43. For longer-dated tenor transactions, should the Commission establish appropriate minimum block sizes at a fraction of the block trade sizes set by DCMs? This variation to the proposed approach would be based on the premise that longer-dated swaps may be less liquid.

Q43.a. If so, then for which specific futures-related swap contracts? What is an appropriate fraction? For which tenors should the fraction apply (*e.g.,* tenors beyond three months, one year, two years, etc.)?

b. Post-Initial Methodology for Determining Appropriate Minimum Block Sizes in the FX Asset Class

In the post-initial period, the Commission is proposing under § 43.6(f)(2) to utilize the 67-percent notional amount calculation to determine appropriate minimum block sizes for swap categories in the FX asset class. That is, the Commission would group all publicly reportable swap transactions in the FX asset class into their respective swap categories and then apply the 67-percent notional amount calculation to determine the appropriate minimum block sizes.

Request for Comment

Q44. Should the Commission continue to utilize the initial appropriate minimum block sizes for futures-related FX swaps as a minimum or floor appropriate minimum block size in the post-initial period? Should this floor level only apply to short-dated tenors? [230]

Q45. Should the Commission establish post-initial appropriate minimum block sizes for swaps in the FX asset class using one of the alternative methodologies discussed in Q35 above?

4. Methodologies for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class

The Commission is proposing to use different methodologies for the initial and post-initial periods to determine appropriate minimum block sizes for swaps categories in the other commodity asset class. The proposed methodology for determining the appropriate minimum block sizes in the initial period differs based on the three types of other commodity swap categories: (1) Those swaps based on contracts listed in appendix B to part 43 of the Commission's regulations [231]; (2) swaps that are economically related to certain futures contracts [232]; and (3) other swaps.[233] The Commission has set initial appropriate minimum block sizes for publicly reportable swap transactions in which the underlying asset directly references or is economically related to the natural gas or electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations.[234] The proposed methodology for determining the appropriate minimum block sizes for other commodity swaps in the post-initial period follows the same methodology used for determining the post-initial appropriate minimum block sizes in the interest rate, credit and FX asset classes. A more detailed description of the methodologies during the initial and post-initial periods, as well as the rules for the special treatment of listed natural gas and electricity swaps are presented in the subsections below.

a. Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class (Other Than Natural Gas and Electricity Swaps Proposed To Be Listed in Appendix B to Part 43)

With respect to swaps that reference or are economically related to one of the futures contracts listed in appendix B to part 43 [235] or proposed § 43.6(b)(5)(ii), the Commission would set the appropriate minimum block size based on the block sizes for related futures contracts set by DCMs.[236] For swaps that reference or are economically related to a futures contract listed in appendix B to part 43 that is not subject to a DCM block trade rule, the Commission proposes in § 43.6(e)(3) to disallow treatment as a block trade or large notional off-facility swap. The Commission bases this approach on an inference that DCMs have not set block trade rules for certain futures contracts because of the degree of liquidity in those futures markets.

In the initial period, the Commission provides in proposed § 43.6(e)(2) to treat all non-futures-related swaps [237] in the other commodity asset class as block trades or large notional off-facility swaps (*i.e.,* these swaps would be subject to a time delay under part 43, irrespective of notional amount). The Commission currently believes that non-futures-related swaps in the other commodity asset class generally have lower liquidity in contrast to the more liquid interest rate, credit and equity asset classes, as well as other commodity swaps that are economically related to liquid futures contracts (*i.e.,* those futures contracts listed in proposed appendix B to part 43).

Request for Comment

Q46. Should the Commission allow swaps that are economically related to futures contracts listed on appendix B to part 43 (but are not subject to a DCM's block trade rules) to qualify as block trades or large notional off-facility swaps—*i.e.,* should the Commission not finalize § 43.6(e)(3) as proposed? If so, how should the Commission determine the initial appropriate minimum block size for such contracts? [238]

Q47. Please provide comment regarding the Commission's current belief that non-futures-related swaps in the other commodity asset class generally have lower liquidity in contrast to the more liquid interest rate, credit and equity asset classes, as well

[230] For example, swaps with a tenor of less than one or three months.

[231] *See* proposed § 43.6(b)(5)(i).

[232] These futures contracts are: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index Excess Return; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI) (GSCI Excess Return Index); NYMEX Gulf Coast Gasoline; Gulf Coast Sour Crude Oil; NYMEX Gulf Coast Ultra Low Sulfur Diesel; CME Hurricane Index; CME International Skimmed Milk Powder; NYMEX New York Harbor Ultra Low Sulfur Diesel; CBOT Nonfarm Payroll; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; CME U.S. Dollar Cash Settled Crude Palm Oil; and CME Wood Pulp. *See* proposed § 43.6(b)(5)(ii).

[233] *See* proposed § 43.6(b)(5)(iii).

[234] The Commission notes that pursuant to proposed § 43.6(b)(5)(i), each of the listed natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 would be considered its own swap category.

[235] The futures contracts that are currently listed on appendix B to part 43 are the 28 Enumerated Reference Contracts plus Brent Crude Oil (ICE). The 13 swap contracts that the Commission is proposing to add to appendix B to part 43 of the Commission's regulations in this Further Proposal are not futures contracts.

[236] In situations when two or more DCMs offer for trading futures contracts that are economically related, the Commission has selected the lowest applicable non-zero futures block size among the DCMs as the initial appropriate minimum block size. The Commission believes that this approach would reduce the chance that the appropriate minimum block size established by the Commission in the initial period would have an unintended adverse effect on market liquidity for the relevant swap category.

[237] These non-futures related swaps are not economically related to one of the futures contracts listed in proposed appendix B to part 43 or in proposed § 43.6(b)(5)(ii). *See* proposed § 43.6(b)(5)(iii).

[238] For example, the Commission could set an appropriate minimum block size at $25 million or treat all of these swaps as block trades or large notional off-facility swaps.

as in contrast to other commodity swaps that are economically related to liquid futures contracts.

b. Initial Period Methodology for Natural Gas and Electricity Swaps in the Other Commodity Asset Class Proposed To Be Listed in Appendix B to Part 43

For swaps in which the underlying asset references or is economically related to one of the natural gas or electricity swaps listed in appendix B to part 43, the Commission is proposing to treat such natural gas and electricity swaps differently than other publicly reportable swap transactions in the other commodity asset class when setting the initial appropriate minimum block sizes. The Commission recognizes that traders typically offset their positions in the natural gas and electricity markets through trading OTC forward contracts, swaps, plain vanilla options, non-standard options and other customized arrangements since existing futures contracts listed on DCMs only cover a limited number of electricity delivery points.[239] As discussed in section III.C.4 below, the Commission is proposing to amend appendix B to part 43 of the Commission's regulations to add 13 natural gas and electricity swap contracts, which the Commission previously has determined to be liquid contracts serving a price discovery function. Accordingly, the Commission is proposing that for all swaps that reference natural gas or electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations, the Commission would set the initial appropriate minimum block size at $25 million, which corresponds to the level of the interim and initial cap sizes.[240] The $25 million initial appropriate minimum block size would be applied to natural gas and electricity swaps that reference or are economically related to the natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations.

Request for Comment

Q48. Please provide specific comments regarding the Commission's proposed approach to determine the initial appropriate minimum block sizes for publicly reportable swap transactions that reference or are economically related to natural gas or electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations.

Q49. Should the initial appropriate minimum block size for the publicly reportable swap transactions that reference the natural gas or electricity swaps proposed to be listed be greater than or lower than $25 million? If so, then why?

Q50. Should the appropriate minimum block sizes for the gas and electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations be different based on the referenced underlying assets? If so, how should the appropriate minimum block sizes be differentiated and at what levels should the appropriate minimum block sizes be set? Please provide data to support your comment.

Q51. Are there other swaps within the other commodity asset class that should be treated in a manner similar to the manner being proposed for the publicly reportable swap transactions that reference or are economically related to the natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations? If so, which underlying assets should be treated the same and why?

c. Post-Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class

In the post-initial period, the Commission provides in proposed § 43.6(f)(3) to determine appropriate minimum block sizes for swaps in the other commodity asset class by using the 67-percent notional amount calculation set forth in proposed § 43.6(c)(1). The 67-percent notional amount calculation would be applied to publicly reportable swap transactions in each swap category observed during the appropriate time period.

Request for Comment

Q52. The Commission requests specific comment regarding its proposed methodology to determine post-initial appropriate minimum block sizes for the swap categories in the other commodity asset class.

Q53. As an alternative to the proposed methodology, should the Commission continue to utilize the initial appropriate minimum block sizes for futures-related swaps in the other commodity asset class as a minimum or floor in the post-initial period? If so, then should this floor only apply to short-dated tenors? [241]

Q54. As another alternative, for the swap categories in the other commodity class that fall under proposed § 43.6(b)(5)(iii), should the Commission group these swaps under a single category and apply a single default appropriate minimum block size to all swaps in the category?

Q54.a. If so, then should the Commission set the default appropriate minimum block size without regard to observed data or by some other mechanism?

Q54.b. If the Commission sets the default appropriate minimum block size without regard to observed data, then at what levels should the Commission set appropriate minimum block sizes? For example, should the Commission set the appropriate minimum block size at $25 million?

5. Special Provisions for the Determination of Appropriate Minimum Block Sizes for Certain Types of Swaps

The Commission recognizes the complexity of the swap market may make it difficult to determine appropriate minimum block sizes for particular types of swaps under the methodologies discussed above. For that reason, the Commission is proposing § 43.6(h), which sets out a series of special rules that apply to the determination of the appropriate minimum block sizes for particular types of swaps. The Commission is proposing special rules in respect of: (a) Swaps with optionality; (b) swaps with composite reference prices [242]; (c) ''physical commodity swaps'' [243]; (d) currency conversions; and (e) successor

[239] *See, e.g.,* Statement of Richard McMahon, on Behalf of the Edison Electric Institute, the American Gas Association and the Electric Power Supply Association, before the Committee on Agriculture, U.S. House of Representatives, Mar. 31, 2011 (''[Utilities and energy companies] need the ability to use OTC swaps because existing futures contracts cover limited natural gas and electricity delivery points. The derivatives market has proven to be an extremely effective tool in insulating [their] customers from this risk and price volatility. Utilities and energy companies use both exchange traded and cleared and OTC swaps for natural gas and electric power to hedge commercial risk. About one-half of our gas swaps and about one-third of our power swaps are traded on exchanges.'').

[240] For a discussion of interim and initial cap sizes, see section III.A supra of this Further Proposal.

[241] For example, swaps with a tenor of less than one or three months.

[242] The Commission is proposing to amend § 43.2 to define ''swaps with composite reference prices'' as swaps based on reference prices composed of more than one reference price that are in differing swap categories. The Commission is proposing to use this term in connection with the establishment of a method through which parties to a swap transaction can determine whether a component to their swap would qualify the entire swap as a block trade or large notional off-facility swap.

[243] The Commission is proposing to amend § 43.2 of the Commission's regulations by defining the term ''physical commodity swap'' as a swap in the other commodity asset class that is based on a tangible commodity.

currencies. Each of these special rules is discussed in the subsections below.

a. Swaps With Optionality

A swap with optionality highlights special concerns in terms of determining whether the notional size of such swap would be treated as a block trade or large notional off-facility swap. Proposed § 43.6(h)(1) addresses these concerns and provides that the notional size of swaps with optionality shall equal the notional size of the swap component without the optional component. For example, a LIBOR 3-month call swaption with a calculated notional size of $9 billion for the swap component—regardless of option component, strike price, or the appropriate delta factor—would have a notional size of $9 billion for the purpose of determining whether the swap would qualify as a block trade or large notional off-facility swap.[244]

The Commission is proposing to take this approach with respect to swaps with optionality because, in the Commission's view, it provides an easily calculable method for market participants to ascertain whether their swaps with optionality features would qualify as a block trade or large notional off-facility swap. The Commission is aware that this approach does not take into account the risk profile of a swap with optionality compared to that of a ''plain-vanilla swap,'' but believes that this approach is reasonable to minimize complexity.

b. Swaps With Composite Reference Prices

Swaps with two or more reference prices (*i.e.,* composite reference prices) raise concerns as to which reference price market participants should use to determine whether such swap qualifies as a block trade or large notional off-facility swap.[245] Proposed § 43.6(h)(2) provides that the parties to a swap transaction with composite reference prices (*i.e.,* two or more reference prices) may elect to apply the lowest appropriate minimum block size applicable to any component swap category. This provision also would apply to: (1) Locational or grade-basis swaps that reflect differences between two or more reference prices; and (2) swaps utilizing a reference price based on weighted averages of component reference prices.[246] The Commission is proposing § 43.6(h)(2) in order to provide market participants with a straightforward and uncomplicated way in which determine whether such swap would qualify as a block trade or large notional off-facility swap.

Under proposed § 43.6(h)(2), market participants would need to decompose their composite reference price swap transaction in order to determine whether their swap would qualify as a block trade or large notional off-facility swap. For example, assume that the appropriate minimum block sizes for futures A-related swaps is $3 million, for futures B-related swaps is $800,000, for futures C-related swaps is $1.2 million and for futures D-related swaps is $1 million. If a swap is based on a composite reference price that itself is based on the weighted average of futures price A, futures price B, futures price C, and futures price D (25% equal weightings for each), and the notional size of the swap is $4 million (*i.e.,* $1 million for each component swap category), then the swap would qualify as a block trade or large notional off-facility swap based on the futures B-related swap appropriate minimum block size.

c. Physical Commodity Swaps

Block trade sizes for physical commodities are generally expressed in terms of notional quantities (*e.g.,* barrels, bushels, gallons, metric tons, troy ounces, etc.). The Commission is proposing a similar convention for determining the appropriate minimum block sizes for block trades and large notional off-facility swaps. In particular, proposed § 43.6(h)(3) provides that notional sizes for physical commodity swaps shall be expressed in terms of notional quantities using the notional unit measure utilized in the related futures contract market or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity. This approach ensures that appropriate minimum block size thresholds for physical commodities are not subject to volatility introduced by fluctuating prices. This approach also eliminates complications arising from converting a physical commodity transaction in one currency into another currency to determine qualification for treatment as a block trade or large notional off-facility swap.

d. Currency Conversion

Under proposed § 43.6(h)(4), the Commission provides that when determining whether a swap transaction denominated in a currency other than U.S. dollars qualifies as a block trade or large notional off-facility swap, swap counterparties and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification. This proposed approach would enable market participants to use a currency exchange rate that they deem to be the most appropriate or easiest to obtain.

e. Successor Currencies

As noted above, the Commission is proposing to use currency as a criterion to determine swap categories in the interest rate asset class.[247] The Commission is also proposing to classify the euro (EUR) as a super-major currency, among other currencies.[248] Proposed § 43.6(h)(5) provides that for currencies that succeed a super-major currency, the appropriate currency classification for such currency would be based on the corresponding nominal gross domestic product (''GDP'') classification (in U.S. dollars) as determined in the most recent World Bank World Development Indicator at the time of succession. This proposed provision is intended to address the possible removal of one or more of the 17 eurozone member states that use the euro.[249]

Proposed § 43.6(h)(5)(i)–(iii) further specifies the manner in which the Commission would classify a successor currency for each nation that was once a part of the predecessor currency. Specifically, the Commission proposes to use GDP to determine how to classify a successor currency. For countries with a GDP greater than $2 trillion, the Commission would classify the successor currency to be a super-major currency.[250] For countries with a GDP

[244] In essence, this approach would assume a delta factor of one with respect to the underlying swap for swaptions.

[245] Swaps with composite reference prices are composed of reference prices that relate to one another based on the difference between two or more underlying reference prices—for example, a locational basis swap (*e.g.,* a natural gas Rockies Basis swap) that utilizes a reference price based on the difference between a price of a commodity at one location (*e.g.,* a Henry Hub index price) and a price at another location (*e.g.,* a Rock Mountains index price)).

[246] In other words, swaps with a composite reference price composed of reference prices that relate to one another based on an additive relationship. This term would include swaps that are priced based on a weighted index of reference prices.

[247] *See* proposed § 43.6(b)(1)(i) and the related discussion in section II.B.1. of this Further Proposal.

[248] *See* the proposed amendment to § 43.2, defining ''super-major currencies.''

[249] The 17 countries that use the euro are: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain.

[250] *See* proposed § 43.6(h)(6)(i).

greater than $500 billion but less than $2 trillion, the Commission would classify the successor currency as a major currency.[251] For nations with a GDP less than $500 billion, the Commission would classify the successor currency as a non-major currency.[252]

Request for Comment

Q55. The Commission requests general comments on its proposed special rules in proposed § 43.6(h).

Q56. As an alternative to the proposed method for determining whether a swap with optionality would qualify as a block trade or large notional off-facility swap (*i.e.,* proposed § 43.6(h)(1), should the Commission use a delta-equivalent or gamma-equivalent approach to determine the notional size of swaps with optionality?

Q56.a. What are the direct and indirect costs to market participants of determining delta or gamma equivalents?

Q57. As an alternative to proposed § 43.6(h)(3), should the Commission base notional sizes for physical commodities on the notional amount in the applicable currency?

Q58. As an alternative to proposed § 43.6(h)(4), should the Commission mandate that market participants use the most recent currency exchange rate set at some specified time and location (*e.g.,* 4 p.m. London time from the preceding business day)? This alternative approach could provide greater certainty as to the appropriate conversion rates at the cost of the providing market participants with greater flexibility.

Q59. As another alternative to proposed § 43.6(h)(4), should the Commission publish a currency exchange rate on the Commission's Web site in connection with its regular post-initial appropriate minimum block size determination? If so, then how should the Commission determine the currency exchange rate?

Q60. As an alternative to proposed § 43.6(h)(5), should the Commission classify all successor currencies as major currencies?

Q60.a. Some critics have argued that too much emphasis is currently placed on the importance of GDP as a measure of progress. Should the Commission use a measure other than GDP (*e.g.,* the Index of Sustainable Economic Welfare)?

[251] *See* proposed § 43.6(h)(6)(ii).

[252] *See* proposed § 43.6(h)(6)(iii).

E. Procedural Provisions

1. Proposed § 43.6(a) Commission Determination

The Commission is proposing that it determine the appropriate minimum block size for any swap listed on a SEF or DCM, and for large notional off-facility swaps. Proposed § 43.6(a) specifically provides that the Commission would establish the appropriate minimum block sizes for publicly reportable swap transactions based on the swap categories set forth in proposed § 43.6(b) in accordance with the provisions set forth in proposed §§ 43.6(c), (d), (e), (f) and (h), as applicable. In the Commission's view, this proposed approach would be the least burdensome from a cost-benefit perspective because it significantly reduces the direct costs imposed on SDRs and other registered entities. As noted above, nothing in this Further Proposal would prohibit SEFs and DCMs from setting block sizes for swaps at levels that are higher than the appropriate minimum block sizes determined by the Commission.

Request for Comment

Q61. The Commission requests specific comments on its proposal that the Commission determine appropriate minimum block sizes.

Q62. In the alternative, should the Commission permit SEFs or DCMs to determine the appropriate minimum block size for swaps that the SEFs or DCMs list? Would this alternative lead to unnecessary market fragmentation?

Q62.a. What would be the appropriate parameters or guidance that the Commission should give to SEFs or DCMs in setting appropriate minimum block sizes?

Q62.b. What procedure could the Commission use to ensure that there are standard appropriate minimum block size determinations across all markets?

2. Proposed § 43.6(f)(3) and(4) Publication and Effective Date of Post-Initial Appropriate Minimum Block Sizes

Proposed § 43.6(f)(3) provides that the Commission would publish the post-initial appropriate minimum block sizes on its Web site. Proposed § 43.6(f)(4) provides that these sizes would become effective on the first day of the second month following the date of publication. Per proposed § 43.6(f)(1), the Commission would publish updated post-initial appropriate minimum block sizes in the same manner no less than once each calendar year.

Request for Comment

Q63. The Commission requests specific comment on proposed §§ 43.6(f)(3) and (4).

Q64. Instead of publishing initial appropriate minimum block sizes through proposed appendix F to part 43, should the Commission publish these initial appropriate minimum block sizes on the Commission's Web site at *http://www.cftc.gov*? This approach would ensure that in the post-initial period, no confusion arises in terms of the method for publication and the relevant appropriate minimum block sizes.

3. Proposed § 43.6(g) Notification of Election

Proposed § 43.6(g) sets forth the election process through which a qualifying swap transaction would be treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size are required to notify the SEF or DCM (pursuant to the rules of such SEF or DCM) of their election to have their qualifying publicly reportable swap transaction treated as a block trade. With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify the relevant SDR of such block trade election when transmitting swap transaction and pricing data to the SDR for public dissemination.

Proposed § 43.6(g)(2) is very similar to the first step set forth in proposed § 43.6(g)(1). That is, proposed § 43.6(g)(2) provides, in part, that a reporting party who executes an off-facility swap with an notional amount at or above the applicable appropriate minimum block size is required to notify the relevant SDR of its election to treat such swap as a large notional off-facility swap. This section provides further that the reporting party is required to notify the relevant SDR in connection with the reporting party's transmission of swap transaction and pricing data to the SDR pursuant to § 43.3 of the Commission's regulations.

Request for Comment

Q65. The Commission requests specific comments regarding proposed § 43.6(g), the proposed notification process for the election to treat a qualifying swap transaction as a block trade or large notional off-facility swap.

Q66. As a variation of the proposed approach, should the Commission also require SEFs, DCMs and reporting parties to indicate under which swap category they are claiming block trade or large notional off-facility swap treatment in connection with the transmission of an election notification?

Q67. Are there alternative methods through which a reporting party can elect to treat its qualifying swap transaction as a block trade or large notional off-facility?

Q68. Should the Commission establish a special method of election for small end-users when those end users are the reporting party to a qualifying swap transaction?

4. Proposed § 43.7 Delegation of Authority

Under proposed § 43.7(a), the Commission would delegate the authority to undertake certain Commission actions to the Director of the Division of Market Oversight (''Director'') and to other employees as designated by the Director from time to time. In particular, this proposed delegation would grant to the Director the authority to determine: (1) The new swap categories as described in proposed § 43.6(b); (2) the post-initial appropriate minimum block sizes as described in proposed § 43.6(f); and (3) the post-initial cap sizes as described in the proposed amendments to § 43.4(h) of the Commission's regulations.[253] The purpose of this proposed delegation provision is to facilitate the Commission's ability to respond expeditiously to ever-changing swap market and technological conditions. The Commission is of the view that this delegation would help ensure timely and accurate real-time public reporting of swap transaction and pricing data and further ensure anonymity in connection with the public reporting of such data. Proposed § 43.7(b) provides that the Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this authority. Proposed § 43.7(c) provides that the delegation to the Director does not prevent the Commission, at its election, from exercising the delegated authority.

Request for Comment

Q69. The Commission requests specific comment on its proposed delegation of authority to the Director of certain Commission actions.

Q70. Should the Director be given the authority to take other actions not identified in proposed § 43.7 on behalf of the Commission in connection with the calculation of post-initial appropriate minimum block sizes and cap sizes? If so, then what other actions?

III. Further Proposal—Anonymity Protections for the Public Dissemination of Swap Transaction and Pricing Data

A. Policy Goals

Section 2(a)(13)(E)(i) of the CEA directs the Commission to protect the identities of counterparties to swaps subject to the mandatory clearing requirement, swaps excepted from the mandatory clearing requirement and voluntarily cleared swaps. Similarly, section 2(a)(13)(C)(iii) of the CEA requires that the Commission prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap.[254] In proposed amendments to §§ 43.4(h) and 43.4(d)(4), the Commission is prescribing measures to protect the identities of counterparties and to maintain the anonymity of their business transactions and market positions in connection with the public dissemination of publicly reportable swap transactions. The Commission is proposing to follow the practices used by most federal agencies when releasing to the public company-specific information—by removing obvious identifiers, limiting geographic detail (*e.g.,* disclosing the general, non-specific geographical information about the delivery and pricing points) and masking high-risk variables by truncating extreme values for certain variables (*e.g.,* capping notional values).[255] Further details about the proposals to determine cap sizes and applying them to various swap categories are described below in section III.B of this Further Proposal. Further details regarding the limitations placed on SDRs in connection with the public disclosure of geographic details for the other commodity asset class are provided below in section III.C of this Further Proposal.

B. Establishing Notional Cap Sizes for Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

1. Policy Goals for Establishing Notional Cap Sizes

In addition to establishing appropriate minimum block sizes, the Commission is also proposing to amend § 43.4(h) to establish cap sizes for notional and principal amounts that would mask the total size of a swap transaction if it equals or exceeds the appropriate minimum block size for a given swap category. For example, if the block size for a category of interest rate swaps was $1 billion, the cap size was $1.5 billion, and the actual transaction had a notional value of $2 billion, then this swap transaction would be publicly reported with a delay and with a notional value of $1.5+ billion.

The proposed cap size provisions are consistent with the two relevant statutory requirements in section 2(a)(13) of the CEA. First, the cap size provisions would help to protect the anonymity of counterparties' market positions and business transactions as required in section 2(a)(13)(C)(iii) of the CEA.[256] Second, the masking of extraordinarily large positions also takes into consideration the requirement under section 2(a)(13)(E)(iv), which provides that the Commission take into account the impact that real-time public reporting could have in reducing market liquidity.[257]

2. Proposed Amendments Related to Cap Sizes—§ 43.2 Definitions and § 43.4 Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

The Commission is proposing an amendment to § 43.2 to define the term ''cap size'' as the maximum limit of the principal, notional amount of a swap that is publicly disseminated. This term applies to the cap sizes determined in accordance with the proposed

[253] *See* the discussion of post-initial cap sizes in section III.B. infra. As noted above, the Commission is proposing an amendment to § 43.2 to define the term ''cap size'' as the maximum limit of the principal, notional amount of a swap that is publicly disseminated. This term applies to the cap sizes determined in accordance with the proposed amendments to § 43.4(h) of the Commission's regulations.

[254] This provision does not cover swaps that are ''determined to be required to be cleared but are not cleared.'' *See* 7 U.S.C. 2(a)(13)(C)(iv).

[255] The Commission is following the necessary procedures for releasing microdata files as outlined by the Federal Committee on Statistical Methodology: (i) Removal of all direct personal and institutional identifiers, (ii) limiting geographic detail, and (iii) top-coding high-risk variables which are continuous. *See* Federal Committee on Statistical Methodology, Report on Statistical Disclosure Limitation Methodology 94 (Statistical Policy Working Paper 22, 2d ed. 2005), *http://www.fcsm.gov/working-papers/totalreport.pdf.* The report was originally prepared by the Subcommittee on Disclosure Limitation Methodology in 1994 and was revised by the Confidentiality and Data Access Committee in 2005.

[256] *See* 7 U.S.C. 2(a)(13)(C)(iii).

[257] *See id.* at 2(a)(13)(E)(iv).

amendments to § 43.4(h) of the Commission's regulations.

Section 43.4(h) of the Commission's regulations currently establishes interim cap sizes for rounded notional or principal amounts for all publicly reportable swap transactions. In the Adopting Release, the Commission finalized § 43.4(h) to provide that the notional or principal amounts shall be capped in a manner that adjusts in accordance with the appropriate minimum block size that corresponds to a publicly reportable swap transaction.[258] Section 43.4(h) further provides that if no appropriate minimum block size exists, then the cap size on the notional or principal amount shall correspond to the interim cap sizes that the Commission has established for the five asset classes.[259] In § 43.4(h) and as described in the Adopting Release, the Commission notes that SDRs will apply interim cap sizes until such time as appropriate minimum block sizes are established.[260] The Commission continues to believe that the interim cap sizes for each swap category should correspond with the applicable appropriate minimum block size, to the extent that an appropriate minimum block size exists.[261]

The Commission is now proposing to amend § 43.4(h) both to establish initial cap sizes for each swap category within the five asset classes and also to delineate a process for the post-initial period through which the Commission would establish post-initial cap sizes for each swap category.[262] This Further Proposal would change the term ''interim'' as it is used in § 43.4(h) to ''initial'' in order to correspond with the description of the initial period in proposed § 43.6(e).

a. Initial Cap Sizes

In the initial period,[263] proposed § 43.4(h)(1) sets the cap size for each swap category as the greater of the interim cap sizes set forth in the Adopting Release (existing § 43.4(h)(1)–(5)) or the appropriate minimum block size for the respective swap category.[264] If such appropriate minimum block size does not exist, then the cap sizes shall be set at the interim cap sizes set forth in the Adopting Release (existing § 43.4(h)(1)–(5)).

b. Post-Initial Cap Sizes and the 75-Percent Notional Amount Calculation

In proposed § 43.6(c)(2), the Commission would use the 75-percent notional amount calculation as a means to set post-initial cap sizes for the purpose of reporting block trades or large notional off-facility swaps of significant size. This calculation methodology is different from the 67-percent notional amount calculation methodology that the Commission proposes in § 43.6(c)(1) for determining appropriate minimum block sizes. The Commission is proposing to use the former methodology to set post-initial cap sizes because setting cap sizes above appropriate minimum block sizes would provide additional pricing information with respect to large swap transactions, which are large enough to be treated as block trades (or large notional off-facility swaps), but small enough that they do not exceed the applicable post-initial cap size. This additional information may enhance price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions, while still protecting the anonymity of swap counterparties and their ability lay off risk when executing extraordinarily large swap transactions.

The Commission notes that the appropriate minimum block sizes and the cap sizes seek to achieve the statutory goals set forth in CEA section 2(a)(13)(E)(iv) in different ways.[265] Appropriate minimum block sizes achieve this statutory requirement by providing market participants transacting large notional swaps with a time delay in the public dissemination of swap transaction and pricing data relating to such swaps. As a result of these time delays, market participants are able to offset the risk associated with these swaps. Cap sizes achieve the statutory requirement of CEA section 2(a)(13)(E)(iv) by masking the notional size of large transactions permanently from public dissemination. As a result, market participants conducting extraordinarily large swap transactions would be able to offset risk since an SDR would not publicly disseminate the actual notional amount of such transactions.

While appropriate minimum block sizes and cap sizes both seek to achieve the statutory mandate in CEA section 2(a)(13)(E)(iv), they also seek to address different statutory requirements. As noted above, CEA sections 2(a)(13)(E)(ii) and (iii) require that the Commission specify criteria for determining block trades and large notional off-facility swaps for the purpose of subjecting those trades and swaps to a time delay from public dissemination. In addition, CEA sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) require that the Commission promulgate regulations ensuring that public reporting does not disclose the identities, business transactions and market positions of any person. Cap sizes primarily address the statutory requirements in CEA sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i), while appropriate minimum block sizes primarily address the statutory requirements in 2(a)(13)(E)(ii) and (iii).

Pursuant to proposed § 43.4(h)(2)(ii), the Commission would use a 75-percent notional amount calculation to determine the appropriate post-initial cap sizes for all swap categories.[266] For the 75-percent notional amount calculation, the Commission would determine the appropriate cap size through the following process, pursuant to proposed § 43.6(c)(2): (step 1) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (step 2) convert to the same currency or units and use a trimmed data set; (step 3) determine the sum of the notional amounts of swaps in the trimmed data set; (step 4) multiply the sum of the notional amount by 75 percent; (step 5) rank order the observations by notional amount from least to greatest; (step 6) calculate the cumulative sum of the

[258] *See* 77 FR 1,247.

[259] Sections 43.4(h)(1)–(5) established the following interim cap sizes for the corresponding asset classes: (1) Interest rate swaps at $250 million for tenors greater than zero up to and including two years, $100 million for tenors greater than two years up to and including 10 years, and $75 million for tenors greater than 10 years; (2) credit swaps at $100 million; (3) equity swaps at $250 million; (4) foreign exchange swaps at $250 million; and (5) other commodity swaps at $25 million.

[260] *See* 77 FR 1,215.

[261] Leading industry trade associations agree that cap sizes are an appropriate mechanism to ensure that price discovery remains intact for block trades, while also protecting post-block trade risk management needs from being anticipated by other market participants. *See* ISDA and SIFMA, Block Trade Reporting for Over-the-Counter Derivatives Market, Jan. 18, 2011.

[262] The Commission does not intend the provisions in this Further Proposal to prevent a SEF or DCM from sharing the exact notional amounts of a swaps transacted on or pursuant to the rules of its platform with market participants on such platform irrespective of the cap sizes set by the Commission. To share the exact notional amounts of swaps, the SEF or DCM must comply with § 43.3(b)(3)(i) of the Commission's regulations. *See* 77 FR 1,245.

[263] The initial period is the period prior to the effective date of a Commission determination to establish an applicable post-initial cap sizes. *See* proposed § 43.4(h)(1).

[264] *See* 77 FR 1,249.

[265] Section 2(a)(13)(E)(iv) of the CEA requires that the Commission ensure that public reporting does not materially reduce market liquidity. *See* 7 U.S.C. 2(a)(13)(E)(iv).

[266] *See* proposed § 43.6(c)(2).

observations until the cumulative sum is equal to or greater than the 75-percent notional amount calculated in step 4; (step 7) select the notional amount associated with that observation; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (step 9) set the appropriate minimum block size at the amount calculated in step 8.

Consistent with the Commission's proposed process to determine the appropriate post-initial minimum block sizes, proposed § 43.4(h)(3) provides that the Commission would publish post-initial cap sizes on its Web site. Proposed § 43.4(h)(4) provides that unless otherwise indicated on the Commission's Web site, the post-initial cap sizes would become effective on the first day of the second month following the date of publication.

c. Alternative Cap Size Calculations

In addition to the 75-percent notional amount calculation, the Commission is considering alternative calculations that it would use to set post-initial cap sizes. These calculations are based on common statistical disclosure controls used by other agencies in making data publicly available.[267]

Specifically, the Commission is considering the following six alternative calculations to the 75-percent notional amount calculation of cap sizes during the post-initial period:

• *67-percent Notional Amount Calculation with a Floor.* As a variation of the 75-percent notional amount calculation the Commission is considering determining post-initial cap sizes as the greater of the result of the 75-percent notional amount calculation or the interim cap sizes described in the Adopting Release (existing §§ 43.4(h)(1)–(5)). The Commission recognizes that in certain markets ''shredding'' may result in smaller transaction sizes,[268] thereby impacting the resulting cap size as determined pursuant to the 75-percent notional amount calculation. As a result, post-initial cap sizes could reach levels that are significantly lower than those adopted as interim cap sizes in § 43.4(h). In order to ensure that the public and market participants are provided with meaningful data related to notional amounts and market depth, the Commission believes that requiring this variation may appropriately enhance price discovery consistent with the purpose of CEA section 2(a)(13)(B).

• *Appropriate Minimum Block Size with a Floor.* The Commission is considering whether to set the post-initial cap sizes equal to the greater of the post-initial appropriate minimum block size or the interim cap sizes described in the Adopting Release (existing §§ 43.4(h)(1)–(5)). This alternative method for determining post-initial cap sizes would directly link the post-initial cap sizes to the post-initial appropriate minimum block sizes.

• *Number of Non-affiliated Markets Participant Calculation.* The Commission is also considering whether to set post-initial cap sizes using a calculation that determines the minimum notional value cap size based on the number of non-affiliated market participants who have transactions with notional values greater than the cap size. This process would determine the post-initial cap size through the following process: (1) Select the swap transaction data for a specific swap category; (2) convert to the same currency or units and use a trimmed data set; (3) determine the transaction distribution of notional amounts using the trimmed data set for the swap category; (4) find the minimum notional value where, for transactions with a notional value greater than that value, there are 10 non-affiliated market participants. The Commission anticipates that under this alternative approach, all market participants from the same legal entity would be considered as one non-affiliated market participant.

• *Non-affiliated Market Participants and Minimum Concentration Calculation.* The Commission is also considering whether to set post-initial cap sizes using a calculation that determines the minimum notional value cap size based on number of market participants and the market concentration of transactions with notional sizes above the cap size. This process would determine the post-initial cap size through the following process: (1) Select the swap transaction data for a specific swap category; (2) convert to the same currency or units and use a trimmed data set; (3) determine the transaction distribution of notional amounts using the trimmed data set for the category; (4) find the minimum notional size such that the number of unique participants in a swap category with transactions greater than that value exceeds 10, the maximum share of any one participant in trades above the minimum notional value is less than 25 percent, or the maximum share of notional value by a participant for transactions greater than the minimum notional value is less than 25 percent.

• *Confidence Interval Test.* The Commission is also considering whether to set post-initial cap sizes using a confidence interval test, which determines the point at which masking one more transaction causes the average notional size—calculated from the data for all publicly reportable swap transactions—to be outside of the expected range of the true notional size. This alternative test takes into account the impact of information loss on the transparency for swap transaction and pricing data. The confidence interval test calculates the minimum notional value as the point where the publicly disseminated average notional size is within the 95-percent confidence interval using the following process: (step 1) Select the swap transaction data for a specific swap category; (step 2) convert to the same currency or units and determine the transaction distribution of notional amounts using the logged [269] and trimmed data set for the swap category; (step 3) calculate the average notional size and the 95-percent confidence interval around this average; [270] (step 4) drop the largest

[267] These are typical of statistical disclosure practices used by other Federal agencies as described in the Report on Statistical Disclosure Limitation Methodology, *see* note 255 *supra.*

[268] The term ''shredding'' refers to the practice of breaking up a large swap transaction into a number of smaller ones. The practice is often done to avoid causing a large impact on prices or to conceal the existence of a large trade originating from a single source. When traders attempt to execute a single large trade they may be required to pay a liquidity or risk premium to encourage traders on the other side of the market to take on the trade. Shredding by market participants may cause a marked decrease in the average notional size of transactions as a participant executes numerous smaller transactions as opposed to a single large transaction. For a further discussion of shredding, *see* note 217 *supra.*

[269] In practice, the natural logarithm of the notional value is preferred over the nominal value to reduce the effect of skewness on sample statistics. In addition to classical statistical methods, the calculation of the confidence interval may be improved by using ''bootstrapping'' methods to estimate the distribution of the average notional trade size.

[270] The confidence interval test assumes sufficient data in a swap category such that a normal distribution is a good approximation to compute an interval estimate. To the extent the actual distribution diverges significantly from a normal distribution, the interval estimate may not reflect the probability at the desired (95 percent) confidence interval. In which case, other methods such as ''bootstrapping'' may be necessary to compute the confidence intervals around the full sample average notional size. The Commission notes the ODSG data sets were not normally distributed, but were nearly symmetric after transforming the notional size by the natural logarithm. Further, according to a TABB Group survey, many market participants expected the average notional transaction size to decline, which may imply a change in the distribution. *See* the presentation of Kevin McPartland, Principal, Tabb

remaining transaction from the distribution [271]; (step 5) conditional on the full-sample 95-percent confidence interval, calculate the sample average notional size using the data resulting from step 4; (step 6) if the sample average notional size is not outside of the 95-percent confidence interval, repeat steps 4 and 5 until it is just outside of the 95-percent confidence interval; and (step 7) once the sample average notional size is outside the 95-percent confidence interval, set the minimum notional value equal to the notional value, rounded pursuant to § 43.4(g), of the largest transaction of the distribution for which the sample average notional size was still within the 95-percent confidence interval.[272]

• *Variation of the Confidence Interval Test.* The Commission is also considering a slightly different methodology for the confidence interval test. This variation still would calculate the average of the entire distribution using all of the available data and the 95-percent confidence interval for that average. However, instead of completely dropping the largest remaining transactions (step 4, as referenced in the previous alternative) and then calculating the sample average notional size for the publicly disseminated information without any information from these ''dropped'' transactions (step 5), this alternative methodology would use the notional value of the largest transaction (that would otherwise have been dropped) as though it were the cap size and would calculate the average notional size of the publicly disseminated data by setting the notional values above that size equal to the cap. This approach would simulate the information known by the public if the notional value of that last transaction was the notional cap size. Since the Commission would calculate the average of publicly disseminated transactions with an approximation of the notional value of such transactions above the cap size, the cap size would be lower than the methodology where all information about the size of the transaction is dropped from the estimation.

Request for Comment

Q71. Please provide specific comments regarding the Commission's proposed approach regarding cap sizes in the initial period.

Q72. Please provide specific comments regarding the Commission's proposed approach to set cap sizes in the post-initial period.

Q73. As an alternative to the proposed approach, should initial and post-initial cap sizes always be equal to the appropriate minimum block size for a particular swap category?

Q74. Please provide comments regarding the above-described alternative methods for determining post-initial cap sizes.

Q74.a. Specifically, would any of these alternatives lead to the unintended public disclosure of the identities, market positions and business transactions of swap counterparties?

Q75. Should the Commission provide a fixed cap size for each asset class rather than varying the cap size by swap category?

Q76. Should the Commission consider using linear sensitivity measures or other statistical disclosure controls outlined in the Report on Statistical Disclosure Limitation Methodology from the Federal Committee on Statistical Methodology to set post-initial cap sizes?

Q77. Is the definition of a ''non-affiliated market participant's as described in the alternative methods for calculating the post-initial cap sizes the correct definition for the purpose of calculating the minimum notional amounts that are publicly disseminated?

Q78. Are there other alternative methods for determining the post-initial notional cap sizes that the Commission should consider that are not described in this Further Proposal? If yes, please explain those methods, as well as any data, studies or additional information to support such method.

C. Masking the Geographic Detail of Swaps in the Other Commodity Asset Class

1. Policy Goals for Masking the Geographic Detail for Swaps in the Other Commodity Asset Class

In the Adopting Release, the Commission sets forth general protections for the identities, market positions and business transactions of swap counterparties in § 43.4(d). Section 43.4(d) generally prohibits an SDR from publicly disseminating swap transaction and pricing data in a manner that discloses or otherwise facilitates the identification of a swap counterparty.[273] Notwithstanding that prohibition, § 43.4(d)(3) provides that SDRs are required to publicly disseminate data that discloses the underlying asset(s) of publicly reportable swap transactions.

Section 43.4(d)(4) contains special provisions for swaps in the other commodity asset class. These swaps raise special concerns because the public disclosure of the underlying asset(s) may in turn reveal the identities, market positions and business transactions of the swap counterparties. To address these concerns, § 43.4(d)(4) limits the types of swaps in the other commodity asset class that are subject to public dissemination. Specifically, § 43.4(d)(4)(ii) of the Commission's regulations provides that, for publicly reportable swap transactions in the other commodity asset class, SDRs must publicly disseminate the actual underlying assets only for: (1) Those swaps executed on or pursuant to the rules of a SEF or DCM; (2) those swaps referencing one of the contracts described in appendix B to part 43; and (3) those swaps that are economically related to one of the contracts described in appendix B to part 43.[274] Essentially, the Commission has determined that these three categories of swap have sufficient liquidity such that the disclosure of the underlying asset would not reveal the identities, market positions and business transactions of the swap counterparties.

In its Adopting Release, the Commission included in appendix B to part 43 a list of contracts that, if referenced as an underlying asset, should be publicly disseminated in full without limiting the commodity or geographic detail of the asset. In this Further Proposal, the Commission is proposing to add 13 contracts to appendix B to part 43 under the ''Other Contracts'' heading.[275] The Commission believes that since it previously has determined that these 13 contracts have material liquidity and price references, among other things, the public dissemination of the full underlying asset for publicly reportable swap transactions that reference such contracts (and any underlying assets

Group, CFTC Technology Advisory Committee Meeting, Dec. 13, 2011, available at *http://www.cftc.gov/PressRoom/Events/opaevent_tac121311.*

[271] The Commission is also considering dropping transactions in one-percent increments until the sample average moves outside the 95-percent confidence interval. The Commission would then drop transactions within the last one-percent increment until the actual transaction is found that moves the sample mean outside of the confidence interval.

[272] *See* § 43.4(g), which provides that the notional or principal amount of a publicly reportable swap transaction, ''as described in appendix A to this part [43], shall be rounded and publicly disseminated by [an SDR]'' based on the range of notional or principal amounts.

[273] *See* § 43.4(d)(1) of the Commission's regulations.

[274] Appendix B to part 43 provides a list of 28 ''Enumerated Physical Commodity Contracts'' as well as one contract under the ''Other Contracts'' heading. *See* 77 FR 1,182 app. B.

[275] Appendix B to part 43 currently lists only Brent Crude Oil (ICE) under the ''Other Contracts'' heading.

that are economically related thereto) would not disclose the identities, market positions and business transactions of swap counterparties.

Pursuant to the Adopting Release, any publicly reportable swap transaction in the other commodity asset class that is excluded under § 43.4(d)(4)(ii) would not be subject to the reporting and public dissemination requirements for part 43 upon the effective date of the Adopting Release. The Commission noted in the Adopting Release that it planned to address the group of other commodity swaps that were not subject to the rules of part 43 in a forthcoming release.[276] Accordingly, the Commission is proposing rules in this Further Proposal to address the public dissemination of swap transaction and pricing data for the group of other commodity swaps that are not covered currently by § 43.4(d)(4)(ii).

The Commission is of the view that given the lack of data on the liquidity for certain swaps in the other commodity asset class, the lack of data on the number of market participants in these other commodity swaps markets, and the statutory requirement to protect the anonymity of market participants,[277] the public dissemination of less specific information for swaps with specific geographic or pricing detail may be appropriate. The Commission anticipates that the public dissemination of the exact underlying assets for swaps in this group of the other commodity asset class may subject the identities, market positions and business transactions of market participants to unwarranted public disclosure if additional protections are not established with respect to the geographic detail of the underlying asset. For that reason, the Commission is proposing that SDRs mask or otherwise disguise the geographic details related to the underlying assets of a swap in connection with the public dissemination of such swap transaction and pricing data.[278]

2. Proposed Amendments to § 43.4

In order to accommodate the policy goals described above, the Commission is proposing to add § 43.4(d)(4)(iii) to part 43 to establish rules regarding the public dissemination of the remaining group of swaps in the other commodity asset class (*i.e.,* those not described in § 43.4(d)(4)(ii)). In the Commission's view, proposed § 43.4(d)(4)(iii) would ensure that the public dissemination of swap transaction and pricing data would not unintentionally disclose the identities, market positions and business transactions of any swap counterparty to a publicly reportable swap transaction in the other commodity asset class. In particular, proposed § 43.4(d)(4)(iii) provides that SDRs must publicly disseminate the details about the geographic location of the underlying assets of the other commodity swaps not described in § 43.4(d)(4)(ii) (*i.e.,* other commodity swaps that have a specific delivery or pricing point) pursuant to proposed appendix E to part 43. Proposed appendix E to part 43 is discussed in the next subsection to this Further Proposal.

The Commission recognizes that requiring the public dissemination of less specific geographic detail for an other commodity swap may, to some extent, diminish the price discovery value of swap transaction and pricing data for such swap. The Commission anticipates, however, that the public dissemination of such data would continue to provide the market with useful information relating to market depth, trading activity and pricing information for similar types of swaps. Further, sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) of the CEA expressly require that the Commission protect the identity, market positions and business transactions of swap counterparties.

The Commission is also proposing to make conforming amendments to § 43.4(d). Specifically, the Commission is proposing to amend the introductory language to § 43.4(d)(4)(i) by deleting ''§ 43.4(d)(4)(ii)'' and adding in its place ''§§ 43.4(d)(4)(ii) and (iii)'' to make clear that SDRs have to publicly disseminate swaps data under § 43.4(d)(4)(iii) in accordance with part 43.[279]

3. Application of Proposed § 43.4(d)(4)(iii) and Proposed Appendix E to Part 43—Geographic Detail for Delivery or Pricing Points

Proposed appendix E to part 43 includes the system that SDRs must use to mask the specific delivery or pricing points that are a part of an underlying asset in connection with the public dissemination of swap transaction and pricing data for certain swaps in the other commodity asset class. To the extent that the underlying asset of a publicly reportable swap transaction described in proposed § 43.4(d)(4)(iii) does not have a specific delivery or pricing point, then the provisions of proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43 would not be applicable. Specifically, proposed appendix E to part 43 provides top-coding for various geographic regions, both in the United States and internationally.

Subsection (a) below includes a description of the top-coding U.S. regions. Subsection (b) below includes a description of the top-coding non-U.S. regions. Finally, subsection (c) below proposes a system for SDRs to publicly disseminate ''basis swaps''.[280]

a. U.S. Delivery or Pricing Points

Table E1 in appendix E to part 43 lists the geographic regions that an SDR would publicly disseminate for an off-facility swap in the other commodity asset class that is described in proposed § 43.4(d)(4)(iii). The Commission is proposing that an SDR publicly disseminate swap transaction and pricing data for certain energy and power swaps in the other commodity asset class, as described in more detail below, in a different manner than the remaining other commodities. In order to mask the specific delivery or pricing detail of these energy and power swaps, the Commission is proposing to use established regions or markets that are associated with these underlying assets.

i. Natural Gas and Related Products

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission is setting forth a method to describe the publicly reportable swap transactions that have natural gas or related products as an underlying asset and have a specific delivery or pricing point in the United States. In particular, this proposed section would require SDRs to publicly disseminate a description of the specific delivery or pricing point based on one of the five industry specific natural gas markets set forth by the Federal Energy Regulatory Commission (''FERC'').[281] The FERC Natural Gas Markets reflect natural deviations found in the spot prices in different markets.[282] The Commission

[276] *See* 77 FR 1,211.

[277] *See* sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA. 7 U.S.C. 2(a)(13)(C)(iii), (E)(i).

[278] Limiting the geographical detail is a typical statistical disclosure control used by other federal agencies as described in the Report on Statistical Disclosure Limitation Methodology, see note 255 *supra.*

[279] In addition to proposing limitations on the geographic detail for public dissemination of underlying assets for certain swaps in the other commodity asset class, the Commission is also proposing to amend §§ 43.4(g) and (h) to make conforming changes.

[280] For the purposes of this Further Proposal, basis swaps are defined as swap transactions in which one leg of the swap references a contract described in appendix B to part 43 (or is economically related thereto) and the other leg of the swap does not.

[281] *See* FERC, National Gas Markets—Overview, *http://www.ferc.gov/market-oversight/mkt-gas/overview.asp* (last viewed Jan. 31, 2012).

[282] *See* FERC, Natural Gas Market Overview: Spot Gas Prices, *http://www.ferc.gov/market-oversight/mkt-gas/overview/ngas-ovr-avg-spt-ng-pr.pdf*

anticipates that a distinction for natural gas is necessary to enhance price discovery while protecting the identities of the parties, business transactions and market positions of market participants.

The proposed five markets for public dissemination of delivery or pricing points for natural gas swaps are as follows: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Kansas, Oklahoma, Missouri and Arkansas); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Kentucky, Ohio, West Virginia, New Jersey, Delaware, Maryland and Virginia) [283] (iii) Gulf (including Louisiana and Texas); (iv) Southeast (including Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); and (v) Western (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada and Arizona). For any other pricing points in the United States, SDRs would publicly disseminate ''Other U.S.'' in place of the actual pricing or delivery point for such natural gas swaps.

The Commission is considering alternatives for how to break down the regions or markets with respect to the public dissemination of specific delivery or pricing points for natural gas. The Commission is considering using FERC's Natural Gas Futures Trading Markets, which are different from the FERC Natural Gas Markets described above. The public dissemination regions for delivery or pricing points for such natural gas swaps for this alternative would be as follows: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Missouri, Ohio and Kentucky); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, New York, New Jersey, Delaware and Maryland); (iii) South Central (including Kansas, Oklahoma, Arkansas, Louisiana and Texas); (iv) Southeast (including Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); (v) Western (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada and Arizona).[284] For any other pricing points in the United States, SDRs would publicly disseminate ''Other U.S.'' in place of the actual pricing or delivery point for such natural gas swaps.[285]

Finally, the Commission is also considering whether one of the public dissemination methods described for the ''All Remaining Other Commodities'' would be appropriate with respect to the public dissemination for the specific delivery or pricing points related to natural gas swaps.

ii. Petroleum and Products

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission is setting forth a method to describe the publicly reportable swap transactions that have petroleum products as an underlying asset and have a specific delivery or pricing point in the United States. In particular, this proposed section would require SDRs to publicly disseminate a description of the specific delivery or pricing point based on one of the seven Petroleum Administration for Defense Districts (''PADD'') regions.[286] The PADD regions indicate economically and geographically distinct regions for the purposes of administering oil allocation. The Department of Energy's Energy Information Administration (''EIA'') collects and publishes oil supply and demand data with respect to the PADD regions.[287] Accordingly, to provide consistency with EIA publications and information regarding regional patterns, the Commission is proposing that specific delivery or pricing points with respect to such petroleum product swaps are publicly disseminated based on PADD regions.

The PADD regions for public dissemination of delivery or pricing points for such petroleum product swaps are as follows: (i) PADD 1A (New England); (ii) PADD 1B (Central Atlantic); (iii) PADD 1C (Lower Atlantic); (iv) PADD 2 (Midwest); (v) PADD 3 (Gulf Coast); (vi) PADD 4 (Rocky Mountains); and (vii) PADD 5 (West Coast).[288] For any other pricing points in the United States, SDRs would publicly disseminate the term ''Other U.S.'' in place of the actual pricing or delivery point for such petroleum product swaps.

The Commission is also considering whether one of the public dissemination methods described for the ''All Remaining Other Commodities'' would be appropriate with respect to the public dissemination for the specific delivery or pricing points related to petroleum product swaps.[289]

iii. Electricity and Sources

In proposed § 43.4(d)(4)(iii), the Commission also is setting forth a method to describe publicly reportable swap transactions that have electricity and sources as an underlying asset and have a specific delivery or pricing point in the United States. In particular, this proposed section would require SDRs to publicly disseminate the specific delivery or pricing point based on a description of one of the FERC Electric Power Markets.[290]

The markets for public dissemination of delivery or pricing points for such electricity swaps are as follows: (i) California (CAISO); (ii) Midwest (MISO); (iii) New England (ISO–NE); (iv) New York (NYISO); (v) Northwest; (vi) PJM; (vii) Southeast; (viii) Southwest; (ix) Southwest Power Pool (SPP); and (x) Texas (ERCOT). For any other pricing points in the United States, SDRs would publicly disseminate the term ''Other U.S.'' in place of the actual pricing or delivery point for such electricity and sources swaps.

Alternatively, the Commission is considering using the North American Electric Reliability Corporation (''NERC'') regions for publicly disseminating delivery or pricing points for electricity swaps described in proposed § 43.4(d)(4)(iii). The NERC regions are broader than the FERC regions and include much of Canada. Specifically, the NERC regions are as follows: (i) Florida Reliability Coordinating Council (FRCC); (ii) Midwest Reliability Organization (MRO); (iii) Northeast Power Coordinating Council (NPCC); (iv)

(updated Jan. 1, 2012). In addition, there is evidence that the spot prices in these markets and the corresponding futures prices are highly correlated. D. Murray, Z. Zhu, ''Asymmetric price responses, market integration and market power: A study of the U.S. natural gas market,'' *Energy Economics,* 30 (2008) 748–765.

[283] The District of Columbia would be included in this region, if any specific delivery or pricing points existed at the time of this Further Proposal.

[284] *See* FERC, Gas Futures Trading, Natural Gas Futures Trading Markets, *http://www.ferc.gov/market-oversight/mkt-gas/trading/2011/11-2011-gas-tr-fut-archive.pdf.* (Nov. 2011).

[285] *See* section III.C.3.a.iv *infra.*

[286] *See* PADD Map, Appendix A, Petroleum Administration for Defense Districts, *http://205.254.135.24/pub/oil_gas/petroleum/analysis_publications/oil_market_basics/paddmap.htm.* (last viewed Jan. 31, 2012).

[287] *See* U.S. Energy Information Administration (EIA)—Petroleum & Other Liquids, *http://www.eia.gov/petroleum/data.cfm* (last viewed Jan. 31, 2012).

[288] Alternatively, the Commission is considering combining the East Coast PADD into one category, such that any oil swap with a specific delivery or pricing point as PADD 1A (New England), PADD 1B (Central Atlantic), or PADD 1C (Lower Atlantic) would be publicly disseminated as PADD 1 (East Coast).

[289] *See* section III.C.3.a.iv *infra.*

[290] See FERC, Electric Power Markets—Overview, *http://www.ferc.gov/market-oversight/mkt-electric/overview.asp* (last viewed Jan. 31, 2012).

ReliabilityFirst Corporation (RFC); (v) SERC Reliability Corporation (SERC); (vi) Southwest Power Pool, RE (SPP); (vii) Texas Regional Entity (TRE); (viii) Western Electricity Coordinating Council (WECC).[291]

Finally, the Commission is also considering whether one of the public dissemination methods described below for the ''All Remaining Other Commodities'' would be appropriate with respect to the public dissemination for the specific delivery or pricing points related to electricity and sources swaps.

iv. All Remaining Other Commodities

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission is setting forth a method to describe any swaps in the other commodity asset class that do not have oil, natural gas or electricity as an underlying asset, but have specific delivery or pricing points in the United States. In particular, the Commission is proposing in this section that SDRs publicly disseminate information with respect to these swaps based on the 10 federal regions established by the U.S. Energy Information Administration (''EIA''). The Commission anticipates that the use of the 10 federal regions would provide consistency among different types of underlying assets in the other commodity asset class with respect to delivery and pricing point descriptions. The Commission anticipates, however, that for some underlying assets, the public dissemination of delivery or pricing points by region may still result in thinly-populated swap categories.

The 10 federal regions that SDRs would use for public dissemination for all remaining other commodity swaps are as follows: (i) Region I (including Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont); (ii) Region II (including New Jersey and New York); (iii) Region III (including Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia); (iv) Region IV (including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee); (v) Region V (including Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin); (vi) Region VI (including Arkansas, Louisiana, New Mexico, Oklahoma and Texas); (vii) Region VII (including Iowa, Kansas, Missouri and Nebraska); (viii) Region VIII (including Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming); (ix) Region IX (including Arizona, California, Hawaii and Nevada); and (x) Region X (including Alaska, Idaho, Oregon and Washington).[292] The Commission is also considering whether the use of these 10 federal regions is appropriate for the natural gas, oil and/or electricity swap markets as described above.

Alternatively, the Commission is considering whether SDRs should publicly disseminate information with respect to these swaps based on one of the four U.S. Census regions.[293] The Commission is also considering whether the use of the four U.S. Census regions is appropriate for the natural gas, oil and/or electricity swaps markets as described above. Using the U.S. Census regions, however, might provide fewer reporting categories and, as a result, market participants and the public may lose some price discovery as compared to a description system based on the 10 federal regions. The four U.S. Census regions are: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Missouri, Ohio, Kentucky and Kansas); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania and New Jersey); (iii) South (including Oklahoma, Arkansas, Louisiana, Texas, West Virginia, Maryland, Delaware, District of Columbia, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); and (iv) West (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada, Arizona, Alaska and Hawaii).[294]

Finally, the Commission is considering whether it is appropriate to publicly disseminate the specific delivery or pricing points in the United States for certain types of swaps in the other commodity asset class that are not described in proposed § 43.4(d)(4)(ii). Specifically, the Commission is considering whether public disclosure of such information would disclose the identities, business transactions and market positions of any persons and whether price discovery would be enhanced by publicly disseminating more specific information.

b. Non-U.S. Delivery or Pricing Points

Table E2 in proposed appendix E to part 43 provides the appropriate manner for SDRs to publicly disseminate non-U.S. delivery or pricing points for all publicly reportable swap transactions described in the proposed § 43.4(d)(4)(iii). The Commission is of the view that SDRs should not publicly disseminate the actual location for these international delivery or pricing points since the public disclosure of such information may disclose the identities of parties, business transactions and market positions of market participants. In Table E2, the Commission is proposing the countries and regions that an SDR must publicly disseminate. In proposing the use of these geographic breakdowns for the public reporting of international delivery or pricing points, the Commission considered world regions that have significant energy consumption, whether ISDA-specific documentation exists for a particular country, and whether public disclosure would compromise the anonymity of the swap counterparties.

The Commission is proposing the following international regions for publicly disseminating specific delivery or pricing points of publicly reportable swap transactions described in § 43.4(d)(4)(iii): (i) North America (publicly disseminate ''Canada'' or ''Mexico''); (ii) Central America (publicly disseminate ''Central America''); (iii) South America (publicly disseminate ''Brazil'' or ''Other South America''); (iv) Europe (publicly disseminate ''Western Europe,'' ''Northern Europe,'' ''Southern Europe,'' or ''Eastern Europe''); (v) Russia (publicly disseminate ''Russia'')[295]; (vi) Africa (publicly disseminate ''Northern Africa,'' ''Western Africa,'' ''Eastern Africa,'' ''Central Africa,'' or ''Southern Africa''); (vii) Asia-Pacific (publicly disseminate ''Northern Asia,'' ''Central Asia,'' ''Eastern Asia,'' ''Western Asia,'' ''Southeast Asia'' or ''Australia/New Zealand/Pacific Islands''). The Commission is considering whether a more granular approach is necessary for certain regions in order to enhance price discovery while still protecting anonymity. For example, Mexico, Canada and Russia may benefit from a more granular public dissemination of delivery or pricing points given the

[291] *See* NERC, Key Players: Regional Entities, *http://www.nerc.com/page.php?cid=1%7C9%7C119* (last visited Jan. 31, 2012).

[292] *See* U.S. Energy Information Administration, U.S. Federal Region Map, *http://www.eia.gov/cneaf/electricity/page/channel/fedregstates.html* (last visited Jan. 31, 2012).

[293] *See* U.S. Department of Commerce, Economics and Statistics Administration, Census Bureau, Census Regions and Divisions of the United States, *http://www.census.gov/geo/www/us_regdiv.pdf* (last viewed Jan. 31, 2012).

[294] *See* note 293 supra.

[295] Note that Russia is not included in ''Eastern Europe'' or in ''Northern Asia'' and instead should be publicly disseminated as ''Russia.''

amount of energy production in those regions.

Alternatively, the Commission is considering a broader approach to the public dissemination of non-U.S. delivery or pricing points for swaps described in proposed § 43.4(d)(4)(iii). Specifically, the Commission is considering public dissemination of only the top-level regions for certain regions (*e.g.,* ''Africa'' instead of ''North Africa''). The Commission is considering this alternative approach in order to prevent the public disclosure of the identities, business transactions and market positions of swap counterparties.

Finally, the Commission is considering whether it is appropriate to publicly disseminate the specific delivery or pricing points outside the United States for certain types of swaps in the other commodity asset class that are not described in § 43.4(d)(4)(ii). Specifically, the Commission is considering whether public disclosure of such information would disclose the identities, business transactions and market positions of any persons and whether price discovery would be enhanced by publicly disseminating more specific information.

To the extent that a publicly reportable swap transaction described in proposed § 43.4(d)(4)(iii) references the United States as a whole and not a specific delivery or pricing point, proposed appendix E would require an SDR to publicly disseminate that reference. For example, an SDR would publicly disseminate a weather swap that references ''U.S. Heating Monthly'' as ''U.S. Heating Monthly.''

c. Basis Swaps

The Commission is proposing to require SDRs to ensure that specific underlying assets are publicly disseminated for basis swaps that qualify as publicly reportable swap transactions. The Commission recognizes that basis swaps exist in which one leg of the swap references a contract described in appendix B to part 43 (or is economically related to one such contract) and the other leg of the swap references an asset or pricing point not listed in appendix B to part 43. With respect to the leg of a basis swap that does not reference a contract in appendix B to part 43, the Commission is proposing to require SDRs to publicly disseminate the underlying asset of the basis swap pursuant to proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43. That is, § 43.4(d)(4) currently requires an SDR to publicly disseminate the underlying asset of the leg of the basis swap that references a contract listed in appendix B to part 43. To the extent that a basis swap is executed on or pursuant to the rules of a SEF or DCM, an SDR would publicly disseminate the specific underlying asset (*i.e.,* the top-coding provisions of proposed § 43.4(d)(4)(iii) would not apply since those basis swaps are executed on or pursuant to the rules of a SEF or DCM).

Request for Comment

Q79. The Commission requests specific comment on all aspects of the proposed anonymity protections for the public dissemination of publicly reportable swap transactions in the other commodity asset class.

Q80. As an alternative to the proposed approach, should the Commission narrow the limited transaction reporting detail provisions of proposed § 43.4(d)(4)(iii) to exclude other commodity swaps involving many non-affiliated market participants during a sufficiently long observation period—for example, an observation period of at least one year? This alternative approach would be predicated on the notion that reduced market concentration is indicative of a market with very limited or non-existent anonymity concerns.

Q80.a. Would this alternative approach enhance price discovery in other commodity swap markets by providing more granular data to the public? [296]

Q80.b. Does this approach create a risk that SDRs would publicly disclose details regarding the identities of swap counterparties and their business transactions in these markets in light of the other anonymity protections (*e.g.,* the rounded notional or principal amounts provisions of §§ 43.4(g)–(h), the applicable cap size provisions, and any relevant reporting delay)?

Q80.c. Should the Commission adopt a combination of the alternative approach and the proposed top-coding approach? If yes, then how should the Commission apply the combination of these two approaches?

Q81. Would any of the alternatives in the discussion of proposed appendix E to part 43 above improve price discovery? Would any of these alternatives improve anonymity protections?

Q82. From the standpoint of enhancing price discovery and protecting anonymity, would public dissemination of specific delivery or pricing points based on the FERC Natural Gas Futures Trading Markets be a better alternative than the regions established by the FERC Natural Gas Markets?

Q83. Would the benefits of using the same categories or regions for all types of other commodities outweigh the potential loss of enhanced price discovery and/or the potential increased risk of disclosure?

Q84. Would the proposal to use U.S. regions for natural gas products, petroleum and products, electricity and sources and other commodity groups enhance or limit price discovery? Would these regions or markets adequately protect the identities, business transactions and market positions of swap counterparties?

Q85. Would the proposed international regions or markets adequately protect the identities, business transactions and market positions of swap counterparties? Is there sufficient volume to support these different international regions within the different types of other commodities?

Q86. Should the international regions vary for each of the different types of commodities within the other commodities asset class (*i.e.,* natural gas and related products, petroleum and products, electricity and sources, all remaining other commodities)? Are there specific regions which should be identified for each of these different types of other commodities?

Q87. Should the Commission limit the proposed requirement for SDRs to anonymize delivery and pricing points for natural gas and related products to only natural gas?

Q88. Should the Commission limit the proposed requirement for SDRs to anonymize specific delivery and pricing points for electricity and sources to only electricity?

Q89. Should SDRs publicly disseminate the delivery or pricing point with respect to coal in the same manner as the ''All Remaining Other Commodities''?

Q90. For thinly-traded products or illiquid markets, is a less specific delivery or pricing point necessary to protect anonymity? For example, should there only be a distinction between ''U.S.'' and ''International?'' Would such a broad description limit price discovery to market participants and the public?

Q91. As an alternative approach, please provide comments regarding the use of the other commodity groupings in proposed appendix D to part 43 of the Commission regulations as a means to top-code the public dissemination of the underlying commodities for swaps in

[296] *See, e.g.,* IEA, IEF, OPEC, and IOSCO, Oil Price Reporting Agencies, *http://www.g20.org/Documents2011/11/IOs%20Report%20on%20PRA%20Report.pdf.* (Oct. 2011).

the other commodity asset class that are not described in § 43.4(d)(4)(ii). That is, an SDR would publicly disseminate the individual other commodity swap grouping rather than the specific underlying assets.

Q91.a. Should the Commission apply this additional masking to other commodity swaps that are not described in § 43.4(d)(4)(ii)? If yes, please provide specific examples.

Q91.b. Would the public dissemination of proposed ''Individual Other Commodity'' groups per proposed appendix D to part 43 of the Commission's regulations enhance price discovery?

Q91.c. Do the swap categories in proposed appendix D to part 43 of the Commission's regulations adequately mask the actual underlying commodity in such a way that would protect the anonymity of the identities, market positions and business transactions of swap counterparties?

4. Further Revisions to Part 43

a. Additional Contracts Added to Appendix B to Part 43

Appendix B to part 43 currently lists contracts that, if referenced as an underlying asset, would require SDRs to publicly disseminate the full geographic detail of the asset. In the Adopting Release, the Commission provided that SDRs were required to publicly disseminate any underlying asset of a publicly reportable swap transaction that references or is economically related to any contract or contracts listed in appendix B to part 43 in the same manner.

As noted above, the Commission is proposing to add 13 contracts under the ''Other Commodity'' heading in appendix B to part 43. The addition of these 13 contracts effectively would require SDRs to publicly disseminate these contracts the same way as the other contracts that are currently listed in appendix B to part 43. That is, an SDR would publicly disseminate the actual underlying asset (and any underlying asset(s) that are economically related) without any limitation of the geographic detail.

The Commission previously has determined that these 13 contracts are significant price discovery contracts (''SPDCs'') in connection with trading on exempt commercial markets (''ECMs'').[297] Each of the 13 contracts has undergone an analysis in which the Commission considered the following five criteria: (i) Price linkage (the extent to which the contract uses or otherwise relies on a daily or final settlement price of a contract listed for trade on or subject to the rules of a DCM); (ii) arbitrage (the extent to which the price of the contract is sufficiently related to the price of a contract listed on a DCM to permit market participants to effectively arbitrage between the two markets); (iii) material price reference (the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by contracts being traded or executed on the ECM); (iv) material liquidity (the extent to which volume of the contract is sufficient to have a material effect on other contracts listed for trading); and (v) other material factors.[298]

The Commission anticipates that since the Commission already has determined these 13 contracts to have material liquidity and material price reference, among other things, the public dissemination of the full underlying asset for publicly reportable swap transactions that reference such contracts (and any underlying assets that are economically related thereto) would not disclose the identities, market positions and business transactions of market participants and would enhance price discovery in the related markets.

The Commission notes that the Commission already has determined one additional contract, ''Henry Financial LD1 Fixed Price Contract,'' is a SPDC.[299] The Commission, however, is not proposing to add this contract under the heading ''Other Contracts'' in appendix B to part 43. This contract is economically related to the ''New York Mercantile Exchange Henry Hub Natural Gas,'' which is listed under ''Enumerated Physical Commodity Contracts'' in appendix B to part 43. Therefore, listing this contract again would be redundant.

b. Technical Revisions to Part 43

In the Adopting Release, the Commission states that the transactions described §§ 43.4(d)(4)(ii)(A)–(C) are meant to be exclusive of one another. Under these sections, an SDR is required to publicly disseminate the underlying asset(s) of a swap in the other commodity asset class that is executed on or pursuant to the rules of a SEF or DCM regardless of whether the underlying asset is listed on appendix B to part 43 or is economically related to such contracts. Accordingly, the Commission is proposing a technical clarification to § 43.4(d)(4)(ii)(B) to clarify the intent that these elements are exclusive of one another, as articulated in the preamble to the Adopting Release.

Request for Comment

Q92. How would reporting the 13 contracts that the Commission is proposing to list in appendix B to part 43 impact price discovery and anonymity of those contracts and other publicly reportable swap transactions in the other commodity asset class? For example, does the exact reporting of the PJM WH Real Time Peak Contract impact the remaining volume of publicly reportable swap transactions in the other commodity asset class that would be publicly disseminated with a PJM delivery or pricing point?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') was adopted in 1980 to address concerns that government regulations may have a significant and/or disproportionate effect on small businesses. To mitigate this risk, the RFA requires federal agencies to issue an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[300] These analyses must describe: (i) The economic impact of the proposed rule on small entities, including a statement of the objectives and the legal bases for the rulemaking; (ii) an estimate of the number of small entities to be affected; (iii) identification of federal rules that may duplicate, overlap or conflict with the proposed

[297] The Commission is proposing to add the following SPDC designated contracts to appendix B to part 43. The Commission has previously issued orders finding that these contracts perform a significant price discovery function: AECO Financial Basis Contract traded on the IntercontinentalExchange, Inc. (''ICE'') (*See* 75 FR 23,697); NWP Rockies Financial Basis Contract traded on ICE (*See* 75 FR 23,704); PG&E Citygate Financial Basis Contract traded on ICE (*See* 75 FR 23,710); Waha Financial Basis Contract traded on ICE (*See* 75 FR 24,655); Socal Border Financial Basis Contract traded on ICE (*See* 75 FR 24,648); HSC Financial Basis Contract traded on ICE (*See* 75 FR 24,641); ICE Chicago Financial Basis Contract traded on ICE (*See* 75 FR 24,633); SP–15 Financial Day-Ahead LMP Peak Contract traded on ICE (*See* 75 FR 42,380); SP–15 Financial Day-Ahead LMP Off-Peak Contract traded on ICE (*See* 75 FR 42,380); PJM WH Real Time Peak Contract traded on ICE (*See* 75 FR 42,390); PJM WH Real Time Off-Peak Contract traded on ICE (*See* 75 FR 42,390); Mid-C Financial Peak Contract traded on ICE (*See* 75 FR 38,469); Mid-C Financial Off-Peak Contract traded on ICE (*See* 75 FR 38,469).

[298] The Dodd-Frank Act deleted and replaced CEA section 2(h)(7), which contained the five criteria for determining a SPDC. The Dodd-Frank Act amended CEA section 4a(a) to include CEA section 4a(a)(4), which contains a similar version of the five criteria for determining a SPDC in the context of excessive speculation.

[299] *See* 74 FR 37,988.

[300] *See* 5 U.S.C. 601 *et seq.*

rules; and (iv) a description of any significant alternatives to the proposed rule that would minimize any significant impacts on small businesses.[301] The RFA focuses on direct impact to small businesses and not on indirect impacts on these businesses, which may be tenuous and difficult to discern.[302]

As noted above, section 2(a)(13)(E)(ii) of the CEA directs the Commission to prescribe regulations specifying ''the criteria for determining what constitutes a large notional off-facility swap transaction (block trade) for particular markets and contracts.'' In general, proposed § 43.6 sets out, inter alia, the criteria to determine swap categories and the methodologies that the Commission would employ in determining the appropriate minimum block sizes for those swap categories. In addition, the proposed amendments to § 43.4 set out a system to mask the notional amounts of swaps of relative large size, as well as a system to anonymize geographic and underlying asset detail for certain other commodity swaps. The Commission is of the view that these proposed provisions would impose only one direct requirement on businesses, including small businesses.[303] Proposed 43.6(a) would require reporting parties to notify an SDR of its election to treat a qualifying publicly reportable swap transaction as a large notional off-facility swap. The Commission anticipates that the direct impact of this requirement would not be significant for the purposes of the RFA.

Indeed, proposed § 43.6(g) would impose minimal notice requirements on market participants that are subject to part 43 of the Commission's regulations. A more fulsome analysis of the implications that proposed § 43.6(g) may have on small businesses is described immediately below.

A. Potential Economic Impact—Proposed § 43.6(g)—Notification of Election

Proposed § 43.6(g) contains the provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the reporting party to a swap that is executed at or above the appropriate minimum block size is required to notify the SEF or DCM (as applicable) of its election to have its qualifying swap transaction treated as a block trade. With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination.

Proposed § 43.6(g)(2) is similar to the first step set forth in proposed § 43.6(g)(1). That is, proposed § 43.6(g)(2) provides, in part, that a reporting party who executes a bilateral swap transaction that is at or above the appropriate minimum block size is required to notify the SDR of its election to treat such swap as a large notional off-facility swap. This section provides further that the reporting party is required to notify the SDR in connection with the reporting party's transmission of swap transaction and pricing data to the SDR for public dissemination.

The second step in the two-step process in proposed § 43.6(g)(1) imposes direct burdens on SEFs and DCMs. The Commission previously has determined that these entities are not small businesses for the purposes of the RFA.[304]

In contrast, the first step in the two-step process in proposed § 43.6(g)(1) and the notification election in proposed § 43.6(g)(2) would impose direct burdens on parties to a swap, which the Commission has determined previously may include a percentage of small end users that are considered small businesses for the purposes of the RFA.[305] Notwithstanding the imposition of this burden, however, the Commission anticipates that the notification requirements in proposed §§ 43.6(g)(1)(i) and 43.6(g)(2) would not create significant economic burdens on small end users. The Commission anticipates that the notification requirements imposed in proposed §§ 43.6(g)(1)(i) and 43.6(g)(2) will likely be automated and electronic. Section 43.3 of the Commission's regulations already requires these entities to report their swap transaction and pricing data to an SDR.[306] The Commission is of the view that requiring these entities to include an additional notification or field in conjunction with the reporting of such data would impose, at best, a marginal and incremental cost.

Moreover, as stated in prior RFA determinations, the Commission anticipates the percentage of end users that would fall within the definition of reporting party[307] would likely be minimal since, according to industry data, most end users transact swaps with a swap dealer.[308] Thus, the percentage of small end users that would be required to notify SDRs directly of their election to treat a swap as a block trade or large notional off-facility swap would not likely be significant.

B. Identification of Duplicative, Overlapping or Conflicting Federal Rules

The Commission has not identified any existing federal rules exist that are duplicative, overlapping or conflicting with the provisions in this Further Proposal, including the provisions in proposed § 43.6(g).

C. Alternatives to Proposed Rules That Will Have an Impact

Under the RFA, the Commission is not required to identify alternatives as a result of its determination that the provisions in proposed § 43.6(g) would not have a significant economic impact on a significant number of small businesses.

D. Certification

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a

[301] *See* 5 U.S.C. 603, 604.

[302] *See Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001); *Am. Trucking Assns.* v. *EPA,* 175 F.3d 1027, 1043 (DC Cir. 1985); *Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327, 340 (DC Cir. 1985).

[303] As discussed below, the Commission is of the view that registered entities such as SDs and MSPs are not small businesses.

[304] *See* 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 67,282 (Nov. 2, 2010); *see also* 47 FR 18,618, 18,619, Apr. 30, 1982 and 66 FR 45,604, 45,609, Aug. 29, 2001.

[305] *See* 77 FR 1,240 (''[T]he Commission recognized that the proposed rule could have an economic effect on certain single end users, in particular those end users that enter into swap transactions with another end-user. Unlike the other parties to which the proposed rulemaking would apply, these end users are not subject to designation or registration with or to comprehensive regulation by the Commission. The Commission recognized that some of these end users may be small entities.''). The term reporting party also includes swap dealers and major swap participants.

The Commission previously has determined that these entities do fall within the definition of small business for the purpose of the RFA. *See* 75 FR at 76,170.

[306] *See* 77 FR 1,240.

[307] *See* 77 FR 1,244.

[308] *See* ISDA/SIFMA Jan. 18, 2011, Block trade reporting over-the-counter derivatives markets, 13–14. *See also* Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products, note 75 *supra.* (''In contrast with the current environment where swap dealers are principals on every trade * * *.'').

significant economic impact on a substantial number of small businesses. Nonetheless, the Commission specifically requests comment on the economic impact that this Further Proposal may have on small businesses.

V. Paperwork Reduction Act

A. Background

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[309] The PRA applies with extraordinary breadth to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes requires ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons.'' [310] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[311]

To effectuate the purposes of the PRA, Congress requires all agencies to quantify and justify the burden of any information collection it imposes.[312] This requirement includes submitting each collection, whether or not it is contained in a rulemaking, to the Office of Management and Budget (''OMB'') for review. The OMB submission process includes completing a form 83–I and a supporting statement with the agency's burden estimate and justification for the collection. When an information collection is established within a rulemaking, the agency's burden estimate and justification should be provided in the proposed rulemaking, subjecting the proposed information collection to the rulemaking's public comment process.

Proposed § 43.6 and amendments to § 43.4 would result in amendments to an existing collection of information within the meaning of the PRA in two respects. Accordingly, the Commission is submitting this Further Proposal to the OMB for review pursuant to 44 U.S.C. 3507(d) and 5 CFR1320.11. OMB has assigned control number 3038–0070 to the existing collection of information, which is titled ''Part 43—Real-Time Public Reporting.'' If adopted, then responses to this amended collection of information would be mandatory.

B. Description of the Collection

Recently, the Commission issued the Adopting Release, which includes three collections of information requirements within the meaning of the PRA. The first collection of information requirement under Part 43 imposed a reporting requirement on a SEF or DCM when a swap is executed on a trading facility or on the parties to a swap transaction when the swap is executed bilaterally. The second collection of information requirement under Part 43 created a public dissemination requirement on SDRs. The third collection of information requirement created a recordkeeping requirement for SEFs, DCMs, SDRs and any reporting party (as such term is defined in part 43 of the Commission's regulations).

Proposed amendments to § 43.4 and proposed § 43.6 would amend the first and second collections of information within the meaning of the PRA as described below. The analysis with respect to the amended collections as a result of proposed § 43.6 is set out in section 1 below. The analysis with respect to the amended collections as a result of proposed amendments to § 43.4 is set out in section 2 below.

1. Proposed § 43.6(g)—Notification of Election

Proposed § 43.6(g) would amend the first and second collections of information within the meaning of the PRA. In particular, proposed § 43.6(g) contains the provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps. Proposed § 43.6(g) is an essential part of this rulemaking because it provides the mechanism through which market participants will be able to elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the parties to a swap that are executed at or above the appropriate minimum block size for the applicable swap category are required to notify the SEF or DCM (as applicable) of their election to have their qualifying swap transaction treated as a block trade. The Commission understands that SEFs and DCMs use automated, electronic, and in some cases, voice processes to execute swap transactions; therefore, the transmission of the notification of a block trade election also would either be automated, electronic or communicated through voice.

The Commission estimates that there are 125 SDs and MSPs, and 1,000 other non-financial end-user parties.[313] The Commission estimates that, on average, SD/MSP reporting parties would likely notify a SEF or DCM of a block trade election approximately 1,000 times per year while non-SD/MSP reporting parties likely would notify a SEF or DCM of a block trade election approximately five times per year.[314] Thus, the Commission estimates that there would be 130,000 notifications of a block trade election by reporting parties under proposed § 43.6(g) each year.[315]

The Commission estimates that the burden hours associated with the § 43.6(g)(1)(i) would include: (i) 30 seconds on average for parties to a swap to determine whether a particular swap transaction qualifies as a block trade based on the appropriate minimum block size of the applicable swap category; and (ii) 30 seconds on average for the parties to electronically transmit or otherwise communicate their notice of election. SDs, MSPs and reporting parties would use existing traders (or other professionals earning similar salaries) to electronically transmit or otherwise communicate their notice of election. Based on the Securities Industry and Financial Market Association's 2010 Securities Industry Salary Survey, the Commission estimates that these block traders would earn approximately $140.93 per hour in total compensation.[316] Accordingly, the

[309] *See* 44 U.S.C. 3501.

[310] *See* 44 U.S.C. 3502.

[311] *See* 5 CFR 1320.3(c)(1).

[312] *See* 44 U.S.C. 3506.

[313] The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (i.e., non-SD/non-MSPs) will be required to report swap transactions annually. 77 FR 1,229–30.

[314] The Commission anticipates that these figures will change as a function of changes in the market structure and practices in the U.S. swaps markets.

[315] The Commission estimates the total number of notifications as follows: 125 SDs/MSPs × 1,000 notifications = 125,000 notifications per year; 1,000 non-SDs/non-MSPs × 5 notifications = 5,000 notifications per year; therefore, the total across all types of entities would be 130,000 notifications per year.

[316] The Commission previously has utilized wage rate estimates based on average salary and average prior year bonus information for the securities industry compiled by SIFMA. These wage estimates are derived from an industry-wide survey of participants and thus reflect an average across

Commission estimates that the total annual burden hour costs associated with the first step in proposed § 43.6(g)(1)(i) would be 2,167 hours [317] or $305,396 in total annual burden hours costs [318] and $11.2 million in total start-up capital costs.[319]

With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination. As noted above, the Commission anticipates that SEFs and DCMs would use automated, electronic and, in some cases, voice processes to execute swap transactions. The Commission estimates that there will be approximately 58 SEFs and DCMs. Accordingly, the Commission estimates that the total annual burden associated with the second step in proposed § 43.6(g)(1)(ii) would be approximately $577,460 in non-recurring annualized capital and start-up costs.[320] The Adopting Release already has addressed the recurring annualized costs for the hour burden, as well as ongoing operational and maintenance costs.

Proposed § 43.6(g)(2) is similar to the first step set forth in proposed § 43.6(g)(1). That is, proposed § 43.6(g)(2) provides, in part, that a reporting party who executes a bilateral swap transaction that is at or above the appropriate minimum block size is required to notify the SDR of its election to treat such swap as a large notional off-facility swap. This section provides further that the reporting party is required to notify the SDR in connection with the reporting party's transmission of swap transaction and pricing data to the SDR for public dissemination. The Commission anticipates that reporting parties may have various methods through which they will transmit information to SDRs, which would include a large notional off-facility swap election. Most reporting parties would use automated and electronic methods to transmit this information; other reporting parties, because of the expense associated with building an electronic infrastructure, may contract with third parties (including their swap counterparty) to transmit the notification of a large notional off-facility swap election.

The Commission estimates that the incremental time and cost burden associated with the § 43.6(g)(2) would include: (i) One minute for a reporting party to determine whether a particular swap transaction qualifies as a large notional off-facility swap based on the appropriate minimum block size of the applicable swap category; and (ii) one minute for the reporting party (or its designee) to electronically transmit or communicate through voice processes its notice of election. The Commission estimates that, of the approximately 2,255 hours incurred by 125 SDs/MSPs and 1,000 non-SD/MSPs, all of those hours would be spent by traders and market analysts (or designee).[321] SIFMA's report states that traders and market analysts make $140.93 per hour in total compensation.[322]

The Commission estimates that, on average, each of the estimated 125 SD/MSP counterparties would likely notify an SDR of a large notional off-facility swap election approximately 500 times per year while each of the estimated 1,000 non-SD/MSP counterparties would notify an SDR approximately five times per year. Accordingly, the Commission estimates that there are, on average, approximately 67,500 notifications large notional off-facility swaps under proposed § 43.6 each year. Accordingly, the Commission estimates that the total annual burden associated with proposed § 43.6(g)(2) would be approximately 2,255 annual labor hours or $317,797 in annual labor costs.[323]

In addition, the Commission estimates that proposed § 43.6(g)(2) would result in $11.2 million in non-recurring annualized capital and start-up costs.[324] The Adopting Release addressed all ongoing operational and maintenance costs.[325]

2. Proposed Amendments to §§ 43.4(d)(4) and 43.4(h)

The Commission addresses the public dissemination of certain swaps in the other commodity asset class in § 43.4(d)(4). Section 43.4(d)(4)(ii)

entities; the Commission notes that the actual costs for any individual company or sector may vary from the average.

The Commission estimated the dollar costs of hourly burdens for different types of relevant professionals using the following calculations:

(1) [(2009 salary + bonus) * (salary growth per professional type, 2009–2010)] = Estimated 2010 total annual compensation. The most recent data provided by the SIFMA report describe the 2009 total compensation (salary + bonus) by professional type, the growth in base salary from 2009 to 2010 for each professional type, and the 2010 base salary for each professional type; therefore, the Commission estimated the 2010 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2010 to 2011 and beyond, did not estimate dollar costs beyond 2010.

(2) [(Estimated 2010 total annual compensation)/(1,800 annual work hours)] = Hourly wage per professional type.]

(3) [(Hourly wage) * (Adjustment factor for overhead and other benefits, which the Commission has estimated to be 1.3)] = Adjusted hourly wage per professional type.]

(4) [(Adjusted hourly wage) * (Estimated hour burden for compliance)] = Dollar cost of compliance for each hour burden estimate per professional type.]

The sum of each of these calculations for all professional types involved in compliance with a given element of this Further Proposal represents the total cost for each counterparty, reporting party, swap dealer, major swap participant, SEF, DCM, or SDR, as applicable to that element of the proposal.

[317] To comply with the election process in proposed § 43.6(g), a market participant likely would need to provide training to its existing personnel and update its written policies and procedures to account for this new process. The total annual burden hours equals the total hours for swap dealers and major swap participants plus the total hours for non-swap dealers and non-major swap participants.

[318] The underlying adjusted labor cost estimate of $140.93 per hour used in this estimate is calculated based on the adjusted wages of swap traders. *See* note 316 *supra.*

[319] The estimated costs are based on the Commission's estimate of the incremental, non-recurring expenditures to reporting entities, including non-SD/non-MSPs (*i.e.,* non-financial end-users) to: (1) update existing technology, including updating its OMS system ($6,761.20); and (2) provide training to existing personnel and update written policies and procedures ($3,195.00). *See* section VI(E)(2)(a)(i)–(ii) infra. The Commission believes that SDs/MSPs would incur similar non-recurring start-up costs. The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (*i.e.,* non-SD/non-MSPs) will be required to report in a year. *See* 77 FR 1229–30.

[320] The Commission bases this estimate on 58 projected SEFs and DCMs, each of which will incur costs of investing in update technology, including updating its OMS system ($6,761.20); and training existing personnel and updating written policies and procedures ($3,195.00). *See* section VI(E)(2)(a)(i)–(ii) *infra.*

[321] The economic costs associated with entering into a third party service arrangement to transmit an electronic notice to an SDR are difficult to determine. There are too many variables that are involved in determining those costs. Notwithstanding this difficulty, the Commission foresees that, for many reporting parties that infrequently trade swaps, the annualized cost of entering into a third-party service arrangement of this type would likely be less than the total annual cost of building an electronic infrastructure to transmit electronic notices directly to an SDR.

[322] *See* note 316 *supra.*

[323] The labor hour estimate is calculated as follows: (125 SDs/MSPs × 500 notifications) + (1,000 non-SDs/non-MSPs × 5 notifications) = 67,500 notifications × 2 minutes/notification = 135,000 minutes/60 minutes/hour = 2,255 hours. The labor cost estimate is calculated as follows: 2,255 labor hours × $140.93 per hour total compensation = $317,797.

[324] The estimated costs are based on the Commission's estimate of the incremental, non-recurring expenditures to reporting entities, including non-SD/non-MSPs (i.e., non-financial end-users) to (1) update existing technology, including updating its OMS system ($6,761.20); and (2) provide training to existing personnel and update written policies and procedures ($3,195.00). *See* section VI(E)(2)(a)(i)–(ii) infra. The Commission believes that SDs/MSPs would incur similar non-recurring start-up costs. The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (i.e., non-SD/non-MSPs) will be required to report in a year. 77 FR 1,229–30.

[325] *See* 77 FR at 1,232.

provides that for publicly reportable swaps in the other commodity asset class, the actual underlying assets must be publicly disseminated for: (1) Those swaps executed on or pursuant to the rules of a SEF or DCM; (2) those swaps referencing one of the contracts described in appendix B to part 43; and (3) any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B to part 43. Pursuant to the Adopting Release, any swap that is in the other commodity asset class that does not fall under § 43.4(d)(4)(ii) would not be subject to reporting and public dissemination requirements upon the effective date of the Adopting Release.

In this Further Proposal, the Commission is proposing a new provision (proposed § 43.4(d)(4)(iii)), which would develop a system for the public dissemination of exact underlying assets in the other commodity asset class with a ''mask'' based on geographic detail. The Commission is proposing a new appendix to part 43, which contains the geographical top-codes that SDRs would use in masking certain other commodity swaps in connection with such swaps public dissemination of swap transaction and pricing data under part 43. The Commission anticipates that there will be approximately 50,000 additional swaps reported to an SDR each year in the other commodity asset class, which the Commission estimates would be $117,395 in annualized hour burden costs.[326]

The Commission's regulations currently provide a system establishing cap sizes. Section 43.4(h) of the Commission's regulations provides that cap sizes for swaps in each asset class shall equal the appropriate minimum block size corresponding to such publicly reportable swap transaction. If no appropriate minimum block size exists, then § 43.4(h) sets out specific interim cap sizes for each asset class.[327]

This Further Proposal would amend § 43.4(h) to establish new cap sizes in the post-initial period using a 75-percent notional amount calculation. Under this proposed amendment, the Commission would perform the calculation; however, SDRs would update their technology and other systems at a minimum of once per year to publicly disseminate swap transaction and pricing data with the cap sizes issued by the Commission.

The Commission estimates that the incremental, start-up costs associated with proposed amendment to §§ 43.4(d)(4) and 43.4(h) for an SDR would include: (1) Reprograming its technology infrastructure to accommodate the proposed masking system and proposed post-initial cap sizes methodology; (2) updating its written policies and procedures to ensure compliance with proposed § 43.4(d)(4)(iii) and the proposed amendment to § 43.4(h); and (3) training staff on the new policies and procedures.[328] The Commission estimates that the total annual burden associated with proposed § 43.4(d)(4)(iii) and the proposed amendments to 43.4(h) would be 1,000 labor hours and approximately $75,900.[329]

C. Request for Comments on Collection

The Commission requests comments on the accuracy of these estimates provided in these proposed amendments to existing collections of information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the burden of the proposed amendments to the collections of information that are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed amendments to the collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the proposed amendments to the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs of OMB by fax at (202) 395–6566 or by email at *OIRAsubmissions@omb.eop.gov*. Please provide the Commission with a copy of the submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the ''Addresses'' section of this Further Proposal for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB and the Commission within 30 days after publication of this Further Proposal. Nothing in this Further Proposal affects the deadline enumerated above for public comment to the Commission.

VI. Cost-Benefit Considerations

A. Introduction

Title VII of the Dodd-Frank Act added section 2(a)(13) to the CEA to direct the Commission to promulgate rules requiring the real-time public reporting of swap transaction and pricing data, while protecting market liquidity for block trades and large notional off-facility swaps. Transaction reporting is a fundamental component of the Dodd-Frank Act's general objectives to reduce risk, increase transparency and promote market integrity within the financial system and the swaps market in particular.

Four provisions in section 2(a)(13) are relevant to this Further Proposal. Section 2(a)(13)(E)(ii) requires the Commission to establish criteria for determining what constitutes a large notional off-facility swap or block trade for particular markets and contracts. Section 2(a)(13)(E)(iii) requires the Commission to specify the appropriate time delay for reporting large notional off-facility swaps and block trades. Finally, sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) collectively require the Commission to protect the identities of counterparties to swaps and to maintain the anonymity of business transactions

[326] The Commission estimates that there will be 5 SDRs, which will collect swaps data in the other commodity asset class. Each SDR would collect swaps data on approximately 10,000 swap transactions in the other commodity asset class. The commission estimates that it will take each SDR on average approximately 1 minute to publicly disseminate swaps data related to these new swap transactions. The number of burden hours for these SDRs would be 833 hours. As referenced in note 318 supra, the total labor costs for a swap trader is $140.93. Thus, the total number of burden hour costs equal the total number of burden hours (833 burden hours) × $140.93.

[327] The Adopting Release calculated and addressed the total ongoing burden hours and burden hour costs. *See* 77 FR 1,1232.

[328] The economic costs associated with entering into a third party service arrangement to transmit an electronic notice to an SDR are difficult to determine because of too many variables involved in determining those costs. Notwithstanding this difficulty, the Commission believes that, for many reporting parties that infrequently trade swaps, the annualized cost of entering into a third-party service arrangement of this type would likely be less than the total annual cost of building an electronic infrastructure to transmit electronic notices directly to an SDR.

[329] This estimate is calculated as follows: Senior Programmer cost ($81.52 adjusted hourly wage × 250 hours) + Systems Analyst ($54.89 adjusted hourly wage × 250 hours) + Compliance Manager ($77.77 adjusted hourly wage × 250 hours) + Compliance Attorney (i.e., Assistant General Counsel) ($89.43 adjusted hourly wage × 250 hours).

and market positions of those counterparties.

The Commission has implemented three of the four provisions in section 2(a)(13). The Adopting Release issued on January 9, 2012 sets forth, *inter alia:* (i) Definitions for the terms ''large notional off-facility swap'' and ''block trade''; (ii) the appropriate time delay for reporting these swaps and trades; and (iii) a system to protect the anonymity of parties to a swap, including the establishment of interim cap sizes and the creation of an exception from the real-time public reporting requirement for certain swaps in the other commodity asset class.

While part 43 defines the terms large notional off-facility swap and block trade and sets forth time delays for reporting such swaps and trades, part 43 as adopted does not ''specify the criteria for determining what constitutes a large notional [off-facility] swap transaction [or block trade] for particular markets and contracts.'' [330] Since the Commission has not yet specified criteria, by default, all publicly reportable swap transactions are now subject to a time delay. The provisions of this Further Proposal would, if adopted, become effective against this baseline—that is, at a point in time when all publicly reportable swap transactions are subject to a time delay and are not publicly reported in real-time (*i.e.,* as soon as technologically practicable).

This Further Proposal seeks to amend part 43 by establishing criteria to group swaps into categories and methodologies to determine appropriate minimum block sizes for each swap category. In addition, this Further Proposal seeks to establish additional measures to protect the identities of swap counterparties and their business transactions. This Further Proposal does not affect provisions relating to the appropriate time delay for block trades and large notional off-facility swaps. Similarly, this Further Proposal does not amend or further propose provisions that would require swap market participants to develop a completely new infrastructure or hire new personnel in order to comply with the existing provisions of part 43.[331]

In the sections that follow, the Commission identifies and considers certain costs and benefits associated with the Further Proposal to amend part 43 as required by section 15(a) of the CEA. The Commission requests comment on all aspects of its proposed consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed in this analysis. In addition, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on the Commission's proposed consideration of costs and benefits.

B. The Requirements of Section 15(a)

Section 15(a) of the CEA [332] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. To the extent that these new regulations reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act. However, to the extent that the new regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's own determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the section 15(a) factors.

C. Structure of the Commission's Analysis; Cost Estimation Methodology

Of the two parts to this Further Proposal, ''Part One'' establishes block trade rules, and ''Part Two'' addresses anonymity protections. Part One further proposes regulations specifying criteria for categorizing swaps and determining the appropriate minimum block size for each swap category. In particular, in Part One the Commission is proposing: (i) The criteria for determining swap categories and the methodologies that it would use to determine the initial and post-initial appropriate minimum block sizes for large notional off-facility swaps and block trades; and (ii) a method by which parties to a swap, SEFs, and DCMs would elect to treat the parties' qualifying swap transactions as block trades or large notional off-facility swaps, as applicable. The Commission has considered the costs and benefits associated with Part One separately for each of the two above-specified groups of provisions since different parties would bear primary compliance obligations for each group. That is, the provisions establishing criteria for determining swap categories and appropriate minimum block size methodologies primarily impose obligations on the Commission, and the provisions establishing election methodology primarily impose obligations on parties to a swap and registered entities.

Part Two provides: (i) A methodology for determining post-initial-period cap sizes; and (ii) a system for the public dissemination of swap transaction and pricing data for certain other commodity swaps with specific underlying assets and geographic detail in a manner that does not disclose the business transactions and market positions of swap market participants. Since Part Two's provisions would impose the same or similar costs (*e.g.,* technology re-programming costs) and confer the same or similar benefits on swap market participants (*e.g.,* anonymity protections with respect to the identities of the parties to a swap and their market transactions), the Commission analyzed the costs and benefits of these provisions in one group section.

Wherever reasonably feasible, the Commission has endeavored to quantify the costs and benefits of this Further Proposal. In a number of instances, however, the Commission lacks or is otherwise unaware of information needed as a basis for quantification. In these instances, the Commission has requested data from the public to aid the Commission in considering the quantitative effects of its rulemaking. Where it has not been feasible to quantify (*e.g.,* because of the lack of accurate data), the Commission has considered the costs and benefits of this Further Proposal in qualitative terms.

The conditions now existent under part 43—*i.e.,* all publicly reportable swap transactions qualify for a time-delay—provide the baseline for the Commission's consideration of incremental costs and benefits that would arise from this Further Proposal.[333] These baseline costs and benefits are discussed in the Adopting Release. As a reference point for estimating the incremental costs and benefits against this baseline, the Commission has used a non-financial

[330] See CEA section 2(a)(13)(E)(ii). 7 U.S.C. 2(a)(13)(E)(ii).

[331] For a discussion of the costs and benefits of the time delay and development of an infrastructure for block trades and large notional off-facility swaps, *see* the Adopting Release, 77 FR 1,232.

[332] 7 U.S.C. 19(a).

[333] *See* 77 FR 1,232.

end-user that already has developed the technical capability and infrastructure necessary to comply with the requirements set forth in part 43.[334] Relative to this reference point, however, the Commission anticipates that in many cases the actual costs to established market participants (including swap counterparties, SDRs and other registered entities) would be lower—perhaps significantly so, depending on the type, flexibility, and scalability of systems already in place. Moreover, the Commission anticipates that with respect to SDRs specifically, they may recover their incremental costs by passing them on as fees assessed on reporting parties—SEFs and DCMs—for use of the SDRs' public dissemination services.[335] In addition, the Commission recognizes that its choice of an alternative method for determining appropriate minimum block sizes and cap sizes may alter the cost and benefit estimates described below.

D. Background; Objectives of This Further Proposal

In the Adopting Release, the Commission stated that it planned to ''issue a separate notice of proposed rulemaking that would specifically address the appropriate criteria for determining appropriate minimum block trade sizes in light of the data and comments received.'' [336] Accordingly, in this Further Proposal, the Commission is specifically proposing to: (1) Establish criteria by creating the concept of a ''swap category'' (*i.e.,* groupings of swaps within the same asset class based on underlying characteristics) [337]; (2) prescribe initial appropriate minimum block sizes based on the Commission's review and analysis of swap market data across certain asset classes [338]; (3) establish a methodology for calculating post-initial appropriate minimum block sizes [339]; (4) establish an obligation for the Commission to calculate appropriate minimum block sizes; (5) provide the method through which parties to a swap may elect block trade or large notional off-facility swap treatment for their swap transaction [340]; (6) establish a system to ensure the anonymity of certain swaps in the other commodity asset class [341]; and (7) establish a methodology for the calculation of post-interim or post-initial cap sizes.[342]

Items (1) through (5) referenced above are addressed in Part One of this Further Proposal since they relate to the proposed criteria, methodology and election for block sizes and large notional off-facility swaps. Items (6) and (7) are discussed in Part Two since they relate to protecting the identity of parties to a swap in accordance with sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA.

E. Costs and Benefits Relevant to the Block Trade Rules Section of the Further Proposal (§§ 43.6(a)–(f) and (h))

The Commission has organized its cost-benefit discussion of the provisions within Part One of this Further Proposal as follows: (1) The proposed criteria for establishing swap categories and a proposed methodology for determining appropriate minimum block sizes; and (2) the proposed method through which the parties to a swap may elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap, as applicable. The Commission has performed a separate section 15(a) analysis with respect to each group of provisions.

1. Costs and Benefits Relevant to the Proposed Criteria and Methodology

In proposed §§ 43.6(a)–(f) and (h), the Commission specifies criteria for establishing swap categories and a proposed methodology that the Commission would use in determining appropriate minimum block sizes. In the subsections that follow, the Commission sets forth brief summaries of the relevant proposed provisions, followed by a discussion of associated costs and benefits.

a. Proposed § 43.6(a) Commission Determination

Pursuant to proposed § 43.6(a), the Commission would determine the appropriate minimum block size for any swap listed on a SEF or DCM, and for large notional off-facility swaps. Following an initial period (as described below), the Commission would calculate and publish all appropriate minimum block sizes across all asset classes no less than once each calendar year.

b. Proposed § 43.6(b) Swap Category

The Commission is proposing a tailored approach to group swaps within each asset class. Section 43.6(b) proposes unique swap categories based on the underlying asset class, relevant economic indicators and the Commission's analysis of relevant swap market data.

c. Proposed §§ 43.6(c)–(f) and (h) Methods for Determining Appropriate Minimum Block Sizes

The Commission is proposing in §§ 43.6(c)–(f) and (h) a phased-in approach, with an initial period and a post-initial period, to determine appropriate minimum block sizes for each swap category. During the initial period, the Commission is proposing a schedule of initial appropriate minimum block sizes in appendix F to part 43. The Commission is proposing to determine the appropriate minimum block sizes for the interest rate and credit asset classes differently from the sizes for the equity, FX and other commodity asset classes. With respect to the interest rate and credit asset class, the Commission established the initial appropriate minimum block sizes based on data it had received from the Over-the-Counter Derivatives Supervisors Group.[343] In calculating these sizes, the Commission has applied the 67-percent notional amount calculation, which is set forth in proposed § 43.6(c)(1).

In proposed § 43.6(d), the Commission would disallow swaps in the equity asset class from being eligible for treatment as block trades or large notional off-facility swaps (*i.e.,* equity swaps would not be subject to a time delay as provided in part 43). As noted above, the Commission is of the view that applying this treatment to the equity asset class is inappropriate given, inter alia, the depth of liquidity in the underlying equity cash market.

With respect to the FX and other commodity asset classes, the appropriate minimum block sizes for

[334] A non-financial end-user is a new market entrant with no prior swaps market participation or infrastructure. This reference point is different from the reference point(s) used in the PRA analysis in section V above for the following two reasons: (1) The burdens in the PRA are narrower than the costs discussed in this section (*i.e.,* the PRA analysis solely discusses costs relating to collections of information, whereas this cost-benefit analysis considers all costs relating to the proposed rules); and (2) as discussed above, the cost-benefit analysis determines costs relative to one market participant that presumably would bear the highest burdens in implementing the proposed rules, whereas the PRA analysis seeks to estimate the costs of the proposed rules on all market participants.

[335] *See* § 43.3(i) of the Commission's regulations, which authorizes an SDR to charge fees to persons reporting swap transaction and pricing data for real-time public dissemination, so long as such fees are equitable and non-discriminatory. The Commission currently does not have sufficient data on which to estimate the fees that an SDR would charge to person reporting swap transaction and pricing data. 77 FR 1,246.

[336] *See* 77 FR 1,185.

[337] *See* proposed § 43.6(b), which defines swap category by asset class.

[338] *See* proposed § 43.6(e) and proposed appendix F to part 43.

[339] *See* proposed §§ 43.6(c) and (f).

[340] *See* proposed § 43.6(g).

[341] *See* proposed amendments to § 43.4(d)(4).

[342] *See* proposed §§ 43.4(h) and 43.6(c).

[343] A discussion of the ODSG is set forth in section II.C.1 of this Further Proposal.

swaps during the initial period would be divided primarily between swaps that are futures-related swaps and those that are not futures related.[344] Proposed appendix F to part 43 lists the proposed initial appropriate minimum block sizes for swap categories in the FX and other commodity asset classes. For those swaps in the FX and other commodity asset classes that are not listed in proposed appendix F to part 43, the Commission generally provides in proposed § 43.6(e)(2) that these swaps would qualify as block trades or large notional off-facility swaps.

After an SDR has collected reliable data for a particular asset class, proposed § 43.6(f)(1) provides that the Commission shall determine post-initial appropriate minimum block sizes for all swaps in the interest rate, credit, FX and other commodity asset classes based on the 67-percent notional amount calculation. The Commission is also proposing special rules for the determination of appropriate minimum block sizes that would apply to all asset classes.

In the following paragraphs, the Commission estimates the costs of the proposed criteria and methodology and discusses their benefits, before considering these costs and benefits in light of the five public interest areas of section 15(a) of the CEA.

d. Proposed §§ 43.6(a)–(f) and (h) Costs Relevant to the Proposed Criteria and Methodology

The Adopting Release identifies the baseline of direct, quantifiable costs to reporting parties, SDRs, SEFs and DCMs from current part 43.[345] The Commission foresees that proposed §§ 43.6(a)–(f) and (h) would impose incremental direct costs on swap market participants and registered entities (i.e., SEFs, DCMs, or SDRs) through the need to reprogram and update their technology to accommodate the Commission's publication of post-initial appropriate minimum block sizes at least once each calendar year following the initial period. The Commission does not anticipate that proposed §§ 43.6(a)–(f) and (h) would impose any direct costs on the general public. As noted above, proposed § 43.6(a) provides that the Commission shall set appropriate minimum block sizes for block trades and large notional off-facility swaps following the procedures set forth in proposed §§ 43.6(b)–(f) and (h). The Commission would determine these sizes both in the initial and post-initial periods. The Commission anticipates that the requirements proposed in § 43.6(a) likely would mitigate new costs since the proposed approach seeks to build on the existing connectivity, infrastructure and arrangements that market participants and registered entities have established in complying with the requirements in part 43 of the Commission's regulations.[346] The Commission anticipates that market participants and registered entities may have to reprogram or update their technology to accommodate the Commission's publication of post-initial appropriate minimum block sizes at least once each calendar year following the initial period. The Commission anticipates that compliance would be slightly different for market participants and registered entities.

Market participants, and specifically non-financial end users, likely would need to provide training to their existing personnel and update their written policies and procedures in order to comply with proposed § 43.6(a)–(f) and (h). The Commission estimates that providing training to existing personnel and updating written policies and procedures would impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,431.26 for each non-financial end-user.[347] This cost estimate includes the number of potential burden hours required to produce and design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the proposed requirements.

Registered entities would likely need to update their existing technology in order to comply with proposed § 43.6(a)–(f) and (h). The Commission estimates that registered entities updating existing technology would impose an initial non-recurring burden of approximately 40 personnel hours at an approximate cost of $2,728 for each registered entity.[348] This cost estimate includes the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to account for each swap category and to update appropriate minimum block sizes at least once each calendar year.

The Commission anticipates that the publication of swap transaction and pricing data may enhance market liquidity. The Commission also anticipates, however, that the immediate reporting of block trades and large notional off-facility swaps may have the potential to increase the costs associated with the trading of those swaps. If these costs increase, then market liquidity may decrease. In these circumstances, swap market participants may experience difficulty managing the risks attendant to their trading activity.

The Commission anticipates that some market participants may face increased, indirect costs if block trades and large notional off-facility swaps are reported without a time delay (*i.e.,* as soon as technologically practicable). Some market makers could experience higher trading costs as a result of increased liquidity risks attendant to the need to offset large swap positions. Market makers ultimately would pass those costs onto their end-user clients. The Commission anticipates that the proposed criteria and methodology may mitigate the potential increase in costs by addressing both liquidity concerns and enhanced price discovery. The Commission also anticipates that its proposed approach of establishing specific criteria for grouping swaps into a finite set of defined swap categories might provide a clear organizational framework that avoids administrative burdens for market participants that otherwise could arise from more numerous and/or non-uniform swap categories.

The Commission anticipates that the potential costs of disruptions to market liquidity and trading activity are

[344] As noted above, the Commission is of the view that the difference in methodology for determining initial appropriate minimum block sizes for swaps in the FX and other commodity asset classes is warranted because: (1) Swaps in these asset classes are closely linked to futures markets; (2) tying block sizes to their economically related futures contracts reduces opportunities for regulatory arbitrage; and (3) DCMs have experience in setting block sizes in such a way that maintains market liquidity.

[345] In the Adopting Release, the Commission noted that ''the direct, quantifiable costs imposed on reporting parties, SEFs and DCMs will take the forms of (i) non-recurring expenditures in technology and personnel; and (ii) recurring expenses associated with systems maintenance, support, and compliance.'' *See* 77 FR 1,231.

[346] In its report, ISDA states that end-users ''will face significant technology and operational challenges as well as increased regulatory reporting requirements. Dealers will have to upgrade infrastructure to deal with automated trading and comply with increased regulatory reporting and recordkeeping.'' *See* Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products note 75 *supra,* at 24.

[347] This estimate is calculated as follows: (Compliance Manager at 10 hours) + (Director of Compliance at 3 hours) + (Compliance Attorney at 2 hours) = 15 hours per non-financial end-user who is a reporting party. A compliance manager's adjusted hourly wage is $77.77. A director of compliance's hourly wage is $158.21. A compliance attorney's hourly wage is $89.43. *See* note 316 *supra.*

[348] The estimate is calculated as follows: (Senior Programmer at 20 hours) + (Systems Analyst at 20 hours). A senior programmer's adjusted hourly wage is $81.52. A systems analyst's adjusted hourly wage is $54.89. *See* note 316 *supra.*

minimized through the proposed regime. That is, the Commission anticipates that the phase-in approach should provide swap market participants with an adequate amount of time to incrementally adjust their trading practices, technology infrastructure and business arrangements to comply with the new block trade regime. This approach also may ensure efficient compliance with the proposal while minimizing the impact of implementation costs to swap market participants, registered entities and the general public.

The Commission anticipates that market participants, registered entities and the general public may bear some indirect costs due to the increased degree of transparency that would result from the criteria and methodology in proposed §§ 43.6(a)–(f) and (h). However, the Commission proposed that the appropriate minimum block trade sizes specified in this Further Proposal are sufficiently moderate to mitigate these indirect costs. The Commission also anticipates that the benefits of transparency would be significant relative to the costs occasioned by the tailored institution of appropriate minimum block size levels proposed in the initial period.

e. Benefits Relevant to Proposed §§ 43.6(a)–(f) and (h)

The Commission anticipates that proposed §§ 43.6(a)–(f) and (h) would generate several overarching, although presently unquantifiable, benefits to swap market participants, registered entities and the general public. Most notably, the Commission expects that the proposed criteria and methodologies for setting appropriate minimum block sizes would provide greater price transparency for a substantial portion of swap transactions in a manner modulated to mitigate any negative impact to swaps market liquidity. More specifically, the proposed regulations would provide price transparency by lifting the current part 43 real-time reporting time delay [349] for swap transactions with notional values under specified threshold levels. At the same time, the Commission's proposed criteria and methodology—including carefully crafted block trades and large-notional off-facility swap categories—are designed to retain time-delay status for those high-notional-value transactions exceeding thresholds intended to avoid a negative market liquidity impact. The phased-in implementation proposed by the Commission is intended to introduce greater transparency in an incremental, measured and flexible manner so that appropriate minimum block sizes are responsive to changing markets.[350] The Commission also intends the proposed approach to enhance price transparency in a manner that respects market participants' and registered entities' efficiency needs. Under proposed § 43.6(a), the Commission would be required to set all appropriate minimum block sizes. The Commission anticipates that its proposed approach would impose significantly fewer direct burdens on market participants and registered entities than an alternative that would require them to engage in a more quantitative analysis to ascertain appropriate minimum block sizes for themselves. Such an alternative approach could lead to market fragmentation, adversely affect market liquidity, or reduce price transparency.

f. Application of the Section 15(a) Factors to Proposed §§ 43.6(a)–(f) and (h)

As noted above, section 15(a) directs the Commission to consider the following five areas in evaluating the costs and benefits of a particular Commission action.

i. Protection of Market Participants and the Public

The Commission anticipates that the criteria and methodology in proposed §§ 43.6(a)–(f) and (h) would protect swap market participants by extending the delay for reporting for publicly reportable swap transactions, as appropriate, while also accommodating the market participant and public interest with enhanced transparency. By setting appropriate minimum block sizes in a thoughtful and measured manner as contemplated in the Further Proposal, the Commission strives to attain at least a near-optimal balance between transparency and liquidity interests. As a result, swap market participants would retain a means to offset risk exposures related to their swap transactions (including outsize swap transactions) at competitive prices. While the Commission notes that all publicly reportable swap transactions would remain subject to a time delay, the Commission foresees a resulting swap-market transparency counterbalance that could benefit swap market participants by promoting greater competition for their businesses. Specifically, the Commission expects that the availability of real-time pricing information for carefully enumerated categories of swap transactions could draw increased swap market liquidity through the competitive appeal of improved pricing efficiency that greater transparency affords. More liquid, competitive swap markets, in turn, allow businesses to offset costs more efficiently than in completely opaque markets, thus serving well the interests of both market participants and the public who should benefit through lower costs of goods and services.[351]

ii. Efficiency, Competitiveness and Financial Integrity of Markets [352]

The Commission anticipates that the proposed criteria and methodology would promote market efficiency, competitiveness and financial integrity of markets in a number of respects, including the following:

- They impose minimal administrative burdens on swap market participants as a result of Commission-specified swap categories and the Commission's responsibility to determine of appropriate minimum block sizes (as opposed to requiring registered entities to establish such categories and determine such sizes).
- With respect to futures-related swaps in the FX and other commodity asset classes, by synchronizing the appropriate minimum block sizes for swaps with DCM block trade sizes for futures during the initial period, they can be expected to reduce opportunities for regulatory arbitrage between the underlying cash or futures markets and the swap markets.
- They retain needed flexibility in light of the changes that the Commission anticipates will occur in swap markets following the implementation of part 43 and other implementing regulations. More specifically, the proposed methodology in §§ 43.6(c)–(f) and (h) would recalibrate appropriate minimum block sizes regularly to ensure that those sizes remain appropriate for, and responsive to, these changing markets.

[349] *See* 77 FR 1,240.

[350] Proposed § 43.6(f)(2) permits the Commission to set appropriate minimum block sizes no less than once annually during the post-initial period. If swap market conditions were to change significantly after the implementation of the provisions of this Further Proposal, the Commission could react to further improve price transparency or to mitigate adverse effects on market liquidity.

[351] There may be a de minimis cost in the form of increased offsetting costs, but the Commission foresees that its proposed criteria and methodology would likely mitigate that cost. A discussion of this de minimis cost is set forth above.

[352] The Commission is presently unable to identify any potential impact to the financial integrity of futures markets from the proposed criteria and methodology in its consideration of section 15(a)(2)(B) of the CEA. Although by its terms, section 15(a)(2)(B) applies to futures (not swaps), the Commission finds this factor useful in analyzing the costs and benefits of swaps regulation, as well.

• As discussed above with respect to the protection of market participants and the public, they would introduce increased market transparency for swaps in a careful, measured manner that seeks to optimize the balance between liquidity and transparency concerns.[353] The Commission anticipates that this enhanced transparency would be introduced in a manner capable of fostering greater competition among swap market participants drawn to the improved pricing efficiency that transparency fosters.

iii. Price Discovery

The Commission anticipates that the proposed criteria and methodology will enhance swap market price discovery by eliminating, to the extent appropriate, the time delays for the real-time public reporting of those swaps as now provided in the Adopting Release. The proposed criteria and methodology of this Further Proposal would ensure that an SDR could be able to publicly disseminate data for certain swaps as soon as technologically practicable. As more trades are published in real-time, reported prices are likely to be better indicators of competitive pricing.

iv. Sound Risk Management Practices

As discussed above, the Commission anticipates that the proposed criteria and methodology, if adopted, would likely result in enhanced price discovery since SDRs would be able to publicly disseminate some swaps as soon as technologically practicable. With better and more accurate data, valuation, and risk assessment information, swap market participants would likely be better able to measure risk. An ability to better manage risk at an entity level is likely to translate to improved market participant risk management generally. Improved risk measurement and management potential, in turn, may reduce the risk of another financial crisis since, presumably, it should better equip market participants to value their swap contracts and other assets during times of market instability. In addition, the proposed criteria and methodology may avoid higher costs that could cause some market participants to abandon swaps transactions in favor of more imperfect financial risk management tools.

The Commission also anticipates that as the market price reflects more accurate economic information, volatility is likely to be reduced, therefore smoothing market risk for participants.

v. Other Public Interest Considerations

The Commission does not anticipate that the proposed criteria and methodology discussed above would have a material effect on public interest considerations other than those identified above.

g. Specific Questions Regarding the Proposed Criteria and Methodology

The Commission requests comments on its cost and benefit considerations with respect to the proposed criteria and methodology. While comments are welcome on all aspects of the proposal, the Commission notes the following specifically:

Q93. Please provide comments regarding views on the accuracy and/or inaccuracy of: (1) The facts cited in support of the Commission's analysis of the identified considerations relating to the proposed criteria and methodology in proposed §§ 43.6(a)–(f) and (h); and (2) the Commission's general analysis.

Q93.a. Please provide estimates or data regarding the direct, quantifiable costs associated with the criteria and methodology in proposed §§ 43.6(a)–(f) and (h).

Q93.b. Please provide estimates or data regarding the indirect, quantifiable costs associated with the criteria and methodology in proposed §§ 43.6(a)–(f) and (h).

Q93.c. Please comment and provide data on whether the proposed criteria and methodology would decrease or increase liquidity in swaps markets.

Q93.d. How can these costs be avoided by the use of alternative trading strategies (*e.g.,* splitting larger trades into smaller trades)? What are the costs related to those alternative trading strategies?

Q93.e. Please provide estimates of the fees that SDRs and other registered entities would charge reporting parties and other market participants in order to pass along the incremental costs associated with proposed §§ 43.6(a)–(f) and (h).

Q93.f. Would market participants abandon swap transactions in favor of more imperfect financial risk management tools?

Q93.g. Does the 67-percent notional amount calculation meet the optimization goal of balancing liquidity and transparency concerns?

Q94. Other than those public interest considerations identified herein, are there any other public interest considerations that the Commission should examine in finalizing proposed §§ 43.6(a)–(f) and (h)?

Q94.a. One of the Commission's rationales for its proposed criteria and methodology is the objective of deterring regulatory arbitrage as between swaps and futures markets. Should the Commission also be concerned regarding the costs and benefits related to regulatory arbitrage as between swaps and forwards markets?

Q95. In a discussion paper titled ''Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products,'' ISDA examined the likely costs and benefits of mandating the execution of interest rate swaps on DCMs and SEFs.[354] ISDA's paper provided an analysis of, inter alia, liquidity and transaction costs in the interest futures and options markets, in addition to a review of liquidity and transaction costs in the OTC derivatives market. ISDA surveyed financial and non-financial end users to estimate the incremental costs resulting from the introduction of the electronic execution requirement in the Commission's proposal for SEFs.[355] The paper identifies some potential costs that are relevant to this Further Proposal, such as technology costs and costs associated with development of algorithms for block trades. This paper also identifies potential costs that are either beyond the scope of this Further Proposal (*e.g.,* costs necessary to establish a SEF) or are irrelevant to an analysis under section 15(a) of the CEA (*e.g.,* costs to regulators). The Commission requests comments on the analysis and conclusions reached in ISDA's paper.

Q96. Will end users that desire to transact large trades under the appropriate minimum block size find it necessary to develop some form of algorithmic trading procedure? If so, what are the direct and indirect costs and benefits related to the development?

Q97. The Commission seeks comment with respect to whether there is a feasible alternative approach to the one now contemplated in proposed § 43.6(a) (*i.e.,* the Commission would assume all responsibilities for determining and publishing appropriate minimum block sizes) that would impose less regulatory

[353] As noted above, under part 43 of the Commission's regulations (as now promulgated in the Adopting Release), all publicly reportable swap transactions are subject to a time delay pending further amending regulation to establish the criteria and methodology to distinguish block trades and large notional off-facility swaps from those swaps that do not meet those definitions. *See* 77 FR 1,217. As a result, SDRs as of now are not required to publicly disseminate publicly reportable swap transactions as soon as technologically practicable.

[354] *See* Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products note 75316 *supra.*

[355] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1,214, Jan. 7, 2011.

burden on swap market participants and the general public.

Q98. The Commission anticipates that increased bid/ask spreads could make it difficult for end users to obtain more competitive pricing for outsize swap transactions. Under this Further Proposal, would the price of executing outsize swap transactions be generally higher? Would bid/ask spreads widen in yield as a result of this Further Proposal?

Q98.a. Whether, and to what extent, do market participants anticipate that their knowledge of bid/ask spreads or of liquidity in a swap market generally will improve as a result of this Further Proposal?

Q98.b. Whether, and to what extent, do market participants anticipate that their knowledge of the competitive price for swaps will improve as a result of this Further Proposal?

Q98.c. Would increased knowledge of the competitive price in a market encourage market participants that may not be current liquidity providers to provide liquidity to the market?

Q99. On average, what are current transaction costs for standard size swaps in comparison to transaction costs in the futures markets? Would transaction costs for swap markets increase as a result of this Further Proposal? If so, by how much? Would the difference between swaps and futures transaction costs induce more market participants to trade futures instead of transacting swaps?

Q100. What effects, if any, would this Further Proposal have on access to swaps markets? Would the Further Proposal positively or negatively impact access opportunities for small end users?

2. Cost-Benefit Considerations Relevant to the Proposed Block Trade/Large Notional Off-Facility Swap Election Process (Proposed § 43.6(g))

Proposed § 43.6(g) contains the provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the parties to a swap executed at or above the appropriate minimum block size for the applicable swap category are required to notify the SEF or DCM, as applicable, of their election to have their qualifying swap transaction treated as a block trade. The Commission anticipates that SEFs and DCMs will use automated, electronic—and in some cases voice—processes to execute swap transactions; and that the transmission of the notification of a block trade election also will be either automated, electronic or communicated through voice processes. A discussion of the costs and benefits relevant to proposed § 43.6(g) is set forth in the subsections that follow.

a. Costs Relevant to the Proposed Election Process (Proposed § 43.6(g))

Non-financial end-users who are reporting parties, as well as SEFs, DCMs, and SDRs would likely bear the costs of complying with the election process in proposed § 43.6(g). The Commission anticipates, however, that these entities already will have made non-recurring expenditures in technology and personnel in connection with the requirements set forth in part 43. In addition, these entities already will be required to incur recurring expenses associated with systems maintenance, support and compliance as described in the cost-benefit discussion in the Adopting Release.[356] As such, the Commission assumes that these non-financial end-users, SEFs, DCMs, and SDRs would likely be able to leverage their existing technology, systems and personnel in complying with the election process in proposed § 43.6(g). Based on this assumption, the Commission anticipates that non-financial end-users, SEFs, DCMs and SDRs would likely have the following direct, quantifiable costs: (i) An incremental, non-recurring expenditure to update existing technology; (ii) an incremental non-recurring expenditure for training existing personnel and updating written policies and procedures for compliance with amendments to part 43; and (iii) incremental recurring expenses associated with compliance, maintenance and operational support in connection with the proposed election process. SDRs also would have incremental, non-recurring expenditures to update existing technology.[357] In the paragraphs that follow, the Commission discusses each of these costs.

i. Incremental, Non-Recurring Expenditure to a Non-Financial End-User, SEF or DCM to Update Existing Technology[358]

To comply with the election process in proposed § 43.6(g), a non-financial end-user, SEF, or DCM likely would need to: (1) Update its OMS system to capture the election to treat a qualifying publicly reportable swap transaction as a block trade or large notional off-facility swap. The Commission estimates that updating an OMS system to permit notification to an SDR of a block trade or large notional off-facility swap election would impose an initial non-recurring burden of approximately 80 personnel hours at an approximate cost of $6,761.20 for each non-financial end-user, SEF or DCM.[359] This cost

[356] *See* 77 FR 1,237. As noted in the Adopting Release, non-financial end-users (that do not contract with a third party) will have initial costs consisting of: (i) Developing an internal order management system capable of capturing all relevant data ($26,689 per non-financial end-user) and a recurring annual burden of ($27,943 per non-financial end-user); (ii) establishing connectivity with an SDR that accepts data ($12,824 per non-financial end-user); (iii) developing written policies and procedures to ensure compliance with part 43 ($14,793 per non-financial end-user); and (iv) compliance with error correction procedures ($2,063 per non-financial end-user). *See id.* With respect to recurring costs, a non-financial end-user will have: (i) Recurring costs for compliance, maintenance and operational support ($13,747 per non-financial end-user); (ii) recurring costs to maintain connectivity to an SDR ($100,000 per non-financial end-user); and (iii) recurring costs to maintain systems for purposes of reporting errors or omissions ($1,366 per non-financial end user). *See id.*

SDRs (that do not enter into contracts with a third party) would have incremental costs related to compliance with part 43 beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54,538 (Sept. 1, 2011). In the Adopting Release, the Commission stated that each SDR would have: (i) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (ii) non-recurring costs to publicly disseminate ($601,003 per SDR); and (iii) recurring costs to publicly disseminate ($360,602 per SDR). *See id.*

In the Adopting Release, the Commission assumed that SEFs and DCMs will experience the same or lower costs as a non-financial end-user. *See id.*

[357] SDRs that do not enter into contracts with a third party would have incremental costs related to compliance with part 43 of the Commission's regulations beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54,538, Sept. 1, 2011. In the Adopting Release, the Commission stated that each SDR would have: (1) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (2) non-recurring costs to publicly disseminate ($601,003 per SDR); and (3) recurring costs to publicly disseminate ($360,602 per SDR). *See id.*

[358] For the same reasons stated in the Adopting Release, the Commission assumes that SEFs and DCMs would experience the same or less costs as a non-financial end-user. *See* 77 FR 1,236. Under proposed § 43.6(g)(1), SEFs or DCMs would be required to transmit a block trade election to an SDR only when the SEF or DCM receives notice of a block trade election from a reporting party.

[359] This estimate is calculated as follows: (Compliance Manager at 15 hours) + (Director of Compliance at 10 hours) + (Compliance Attorney at 5 hours) + (Senior Systems Analyst at 30) + (Senior Programmer at 20) = 80 hours per non-financial

estimate includes an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to permit a non-financial end-user to elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap in compliance with the requirements set forth in proposed § 43.6(g).

ii. Incremental, Non-Recurring Expenditure to a Non-Financial End-User, SEF or DCM To Provide Training to Existing Personnel and Update Written Policies and Procedures

To comply with the election process in proposed § 43.6(g), a non-financial end-user likely would need to provide training to its existing personnel and update its written policies and procedures to account for this new process. The Commission estimates that providing training to existing personnel and updating written policies and procedures would impose an initial non-recurring burden of approximately 39 personnel hours at an approximate cost of $3,195.00 for each non-financial end-user.[360] This cost estimate includes the number of potential burden hours required to produce design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the requirements set forth in proposed § 43.6(g).

iii. Incremental, Recurring Expenses to a Non-Financial End-User, DCM or SEF Associated With Incremental Compliance, Maintenance and Operational Support in Connection With the Proposed Election Process

A non-financial end-user, DCM or SEF likely would incur costs on an annual basis in order to comply with the election process in proposed § 43.6(g). The Commission estimates that annual compliance, maintenance and operation support would impose an incremental, recurring burden of approximately five personnel hours at an approximate cost of $341.60 for each non-financial end-user, DCM or SEF.[361] This cost estimate includes the number of potential burden hours required to design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the requirements set forth in proposed § 43.6(g).

iv. Incremental, Non-Recurring Expenditure to an SDR To Update Existing Technology To Capture and Publicly Disseminate Swap Data for Block Trades and Large Notional Off-Facility Swaps

To comply with the election process in proposed § 43.6(g), an SDR likely would need to update its existing technology to capture elections and disseminate qualifying publicly reportable swap transactions as block trades or large notional off-facility swaps. The Commission estimates that updating existing technology to capture elections would impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,317.58 for each SDR.[362] This cost estimate includes the number of potential burden hours required to amend internal procedures, reprogram systems, and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in proposed § 43.6(g).

b. Benefits Relevant to the Proposed Election Process (Proposed § 43.6(g))

The Commission has identified two overarching, although presently unquantifiable, benefits that the proposed election process in § 43.6(g) would confer on swap market participants, registered entities and the general public. First, although proposed § 43.6(g) sets out a purely administrative process with which market participants and registered entities must comply, the Commission submits that this proposed process is an integral component of the block trade framework in this Further Proposal and in part 43. Consequently, this proposed election process would benefit market participants, registered entities and the general public by providing greater price transparency in swaps markets than currently exists under part 43.[363]

Second, the Commission foresees that the election process would promote market efficiency by creating a standardized process in proposed § 43.6(g) for market participants to delineate which publicly reportable swap transactions qualify for block trade or large notional off-facility swap treatment. In addition, this standardized process would further promote efficiency by allowing market participants and registered entities to leverage their existing technology infrastructure, connectivity, personnel and other resources required under parts 43 and 49 of the Commission's regulations. The Commission has endeavored to craft the Further Proposal in such a manner that its elements work together and avoid duplicative or conflicting obligations on market participants and registered entities.

c. Application of the Section 15(a) Factors to Proposed § 43.6(g)

As noted above, section 15(a) directs the Commission to consider five particular factors in evaluating the costs and benefits of a particular Commission action. These factors are considered below with respect to proposed § 43.6(g).

i. Protection of Market Participants and the Public

Although proposed § 43.6(g) sets out a purely administrative process with which market participants and registered entities must comply, the Commission foresees this proposed process as integral to the effective functioning of the block trade framework in this Further Proposal and in part 43. Consequently, this proposed election process contributes to providing greater swap market transparency than what currently exists under part 43 of the Commission's regulations. Market participants, registered entities and the general public benefit from this enhanced swap market price transparency.

ii. Efficiency, Competitiveness and Financial Integrity [364]

As noted above, the proposed election process would promote efficiency by providing market participants and

end-user who is a reporting party. *See* note 316 *supra.*

[360] This estimate is calculated as follows: (Compliance Manager at 5 hours) + (Director of Compliance at 2 hours) + (Compliance Attorney at 2 hours) + (Senior Systems Analyst at 10) + (Senior Programmer at 20) = 39 hours per non-financial end-user who is a reporting party. A compliance manager has adjusted hourly wages of $77.77. *See* note 316 *supra.*

[361] This estimate is calculated as follows: (Director of Compliance at 1 hour) + (Compliance Clerk at 3 hours) + (Compliance Attorney at 1 hour) = 5 hours per year per non-financial end-user who is a reporting party. A director of compliance has adjusted hourly wages of $158.21. A compliance clerk (junior compliance advisor) has adjusted hourly wages of $31.22. A compliance attorney has adjusted hourly wages of 89.43. *See* note 316 *supra.*

[362] This estimate is calculated as follows: (Sr. Programmer at 8 hours) + (Sr. Systems Analyst at 3 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 15 hours per SDR. A senior programmer has adjusted hourly wages of $81.52. A senior systems analyst has adjusted hourly wages of $64.50. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21. *See* note 316 *supra.*

[363] *See* the discussion of benefits in section VI.E.1.e above with respect to proposed §§ 43.6(a)–(f) and (h).

[364] Although by its terms, section 15(a)(2)(B) of the CEA applies to futures and not swaps, the Commission finds this factor useful in analyzing the costs and benefits of regulating swaps, as well. *See* 7 U.S.C. 19(a)(2)(B).

registered entities with a standardized process to delineate which publicly reportable swap transactions are block trades or large notional off-facility swaps. In addition, the proposed election process would promote efficiency by allowing non-financial end-users, SEFs, DCMs and SDRs to leverage their existing technology infrastructure, connectivity, personnel and other resources required under part 43 and part 49 of the Commission's regulations. The use of existing technologies, connectivity, personnel and other resources would create efficiencies for these entities and significantly minimize costs in connection with implementation of, and compliance with, proposed § 43.6(g).

The Commission has identified no potential impact on competitiveness and financial integrity that would result from the implementation of the proposed election process.

iii. Price Discovery

The Commission has identified no potential material impact to price discovery that would result from the implementation of the proposed election process.

iv. Sound Risk Management Practices

The Commission has identified no potential impact on sound risk management practices that would result from the implementation of the proposed election process.

v. Other Public Interest Considerations

The Commission has identified no potential impact on other public interest considerations (other than those identified above) that would result from the implementation of the proposed election process.

d. Specific Questions Regarding the Proposed Election Process

The Commission requests comments on its cost and benefit consideration with respect to the proposed election process. While comments are welcome on all aspects of the proposal, the Commission is particularly interested in the following:

Q101. Please provide comments regarding the Commission's estimates of direct and indirect costs to non-financial end-users and SDRs.

Q102. Please provide comments regarding views on the accuracy and/or inaccuracy of: (1) The facts cited in support of the Commission's analysis of the identified considerations relating to the proposed election process; and (2) the Commission's analysis.

Q103. Are there any other public interest considerations that the Commission should examine in finalizing proposed § 43.6(g)?

Q104. Are there other alternative processes that would further reduce burdens on market participants and registered entities?

F. Costs and Benefits Relevant to Proposed Anonymity Protections (Amendments to §§ 43.4(d)(4) and (h))

The Commission has organized its cost-benefit discussion of the two proposed amendments to § 43.4 of the Commission's regulations into one section. Section 43.4 as now promulgated prescribes the manner in which SDRs must publicly disseminate swap transaction and pricing data. One amendment proposes to add a system for masking the geographical data for certain other commodity swaps, which are not currently subject to public dissemination. The other amendment proposes to establish a methodology to establish cap sizes for large swap transactions that is different than the methodology for determining appropriate minimum block sizes. Both amendments seek to protect the anonymity of the parties to swaps while providing increased transparency in swaps markets.

A discussion of each amendment is set out immediately below, followed by a discussion of the costs and benefits of the amendments, as well as an analysis of the costs and benefits in light of the five factors identified in section 15(a) of the CEA.

1. Proposed Amendments to § 43.4(d)(4)

The Commission addresses the public dissemination of certain swaps in the other commodity asset class in § 43.4(d)(4). Section 43.4(d)(4)(ii) provides that for publicly reportable swaps in the other commodity asset class, information identifying the actual underlying assets must be publicly disseminated for: (a) Those swaps executed on or pursuant to the rules of a SEF or DCM; (b) those swaps referencing one of the contracts described in appendix B to part 43; and (c) any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B to part 43. Pursuant to the Adopting Release, any swap that is in the other commodity asset class that falls under § 43.4(d)(4)(ii) would be subject to reporting and public dissemination requirements.

In this Further Proposal, the Commission is proposing a new provision, § 43.4(d)(4)(iii), which would establish develop a system for the public dissemination of exact underlying assets in the other commodity asset class with a ''mask'' that is based on commodity detail and geographic detail. The Commission also is proposing a new appendix to part 43, which contains the geographical details that SDRs would use in masking certain other commodity swaps in connection with public dissemination of swap transaction and pricing data.

2. Proposed Amendments to § 43.4(h)

Section 43.4(h) of the Commission's regulations establishes cap sizes for rounded notional or principal amounts that are publicly disseminated for publicly reportable swap transactions. The purpose of establishing cap sizes is to provide anonymity to large swap transactions that, if the notional or principal amounts were revealed, would likely identify the parties to the swap or their business transactions. The Commission notes that the objective of cap sizes differs from the primary objective underlying the establishment of appropriate minimum block sizes. With respect to the latter, the objective is tied to ensuring that a block trade or large notional off-facility swap can be sufficiently offset during a relative short reporting delay.

Section 43.4(h) currently requires SDRs to publicly disseminate the notional or principal amounts of a publicly reportable swap transaction represented by a cap size (*i.e.,* $XX+) that adjusts in accordance with their respective appropriate minimum block size for the relevant swap category. Section 43.4(h) further provides that if no appropriate minimum block size exists with respect to a swap category, then the cap size on the notional or principal amount will correspond with interim cap sizes that the Commission has established for the five asset classes.[365]

The proposed amendment to § 43.4(h) would continue to require SDRs to publicly disseminate cap sizes that correspond with their respective appropriate minimum block sizes during an initial period. However, upon publishing post-initial appropriate minimum block sizes in accordance with proposed § 43.6(f), the Commission also would publish post-initial cap sizes for each swap category by applying the 75-percent notional amount calculation on data collected by SDRs. The Commission would apply the 75-percent notional amount calculation on a three-year rolling window (*i.e.,* beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of

[365] *See* note 259 *supra,* which lists the interim cap sizes set forth in §§ 43.4(h)(1)–(5).

data is accumulated) of such data corresponding to each relevant swap category for each calendar year.

3. Costs Relevant to the Proposed Amendments to §§ 43.4(d)(4) and (h)

SDRs potentially would bear the costs of complying with the proposed amendments to §§ 43.4(d)(4) and (h).[366] The Commission anticipates that these entities already will have made non-recurring expenditures in technology and personnel in connection with the requirements set forth in part 43 and part 49 (which contain rules regarding the registration and regulation of SDRs). As such, SDRs already will be required to pay recurring expenses associated with systems maintenance, support and compliance as described in the cost-benefit discussion in the Adopting Release.[367] Notwithstanding these recurring expenses, an SDR would have additional non-recurring expenditures associated with the amendments to § 43.4. Specifically, the Commission estimates that updating existing technology to capture elections would impose an initial non-recurring burden of approximately 34 personnel hours at an approximate cost of $3,195.00 for each SDR.[368] This cost estimate includes an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in proposed § 43.6(g).

In the Commission's view, these additional non-recurring and recurring costs are not likely to be significant to an SDR given the likelihood that it will leverage its existing technology, systems and personnel in complying with the proposed amendments to § 43.4.

In addition, the Commission anticipates that proposed § 43.4(d)(4)(iii) may result in some incremental, recurring costs for SDRs because they will be required to publicly disseminate other commodity swaps data that were not previously within the scope of the public dissemination requirement in § 43.4. At this time, however, the Commission does not have sufficient data to quantify these costs.

The Commission also anticipates that proposed § 43.4(d)(4)(iii) may result in some indirect costs to the market through reduced information bearing on the contours of total trading in the market. The Commission currently lacks data to quantify the costs associated with the reduction of information.

4. Benefits Relevant to the Proposed Amendments to § 43.4

The Commission anticipates that the proposed anonymity provisions of § 43.4 would generate several overarching, although presently unquantifiable, benefits to swap market participants, registered entities and the general public. In the first instance, the Commission anticipates that the proposed cap size amendments to § 43.4(h) would benefit market participants, registered entities and the general public by providing greater price transparency with respect to swaps with notional amounts that fall between the post-initial appropriate minimum block size and post-initial cap size for a particular swap category. During the post-initial period, the Commission would set appropriate minimum block sizes based on the 67-percent notional amount calculation [369] and cap sizes based on the 75-percent notional amount calculation.[370] Although swaps with notional amounts that fall between these two sizes would be subject to a time delay, the exact notional amounts of these swaps eventually would be publicly disclosed. The Commission is of the preliminary view that the delayed public disclosure of the notional amount of these swaps would provide market participants, registered entities and the general public with meaningful price transparency.

The proposed masking provisions in the amendment to § 43.4(d)(4) and proposed appendix D to part 43 would further benefit market participants, registered entities and the general public by enhancing price discovery with respect to swaps that currently are not required to be publicly disclosed under part 43. Section 43.4(d)(4) currently requires SDRs to publicly disseminate swap transaction and pricing data for publicly reportable swap transactions that reference or are economically related to the 29 contracts identified in appendix B to part 43. The Commission is of the preliminary view that there are a significant number of swaps in the other commodity asset class that are not economically related to the 29 contracts identified in appendix to part 43. The proposed amendment creating new § 43.4(d)(4)(iii) would require the public dissemination of data on these swaps. The Commission proposes that the real-time public reporting of these swaps would enhance price discovery in the other commodity asset class.

Moreover, the Commission's proposed amendments to the anonymity provisions are intended to reduce impacts on market liquidity. As noted above, CEA section 2(a)(13) requires the Commission to prescribe rules for the real-time public reporting of all swap transactions in order to enhance price transparency, while taking into account the effects of such transparency on market liquidity. The Commission's proposed approach would introduce greater transparency in a flexible manner so that post-initial cap sizes are responsive to changing markets. Proposed § 43.4(h) would permit the Commission to set cap sizes no less than once annually during the post-initial period. If swap market conditions change significantly after the implementation of the provisions of this Further Proposal, then the Commission could react in a timely manner to further improve price transparency or to mitigate adverse effects on market liquidity.[371]

Finally, the proposed approach would promote market efficiency for market participants and registered entities. Under proposed § 43.4(h), Commission would be required to set all cap sizes. The Commission anticipates that its proposed approach would impose significantly fewer direct burdens on market participants and registered entities that they otherwise would have

[366] The Commission anticipates that reporting parties, SEFs and DCMs would not incur any new costs related to the proposed amendments to § 43.4 because this section relates to the data that an SDR must publicly disseminate. Section 43.3 of the Commission's regulations sets out the requirements for reporting parties, SEFs and DCMs in terms of what is transmitted to an SDR.

[367] *See* 76 FR 54,572–75. As noted in SDR final rule, SDRs (that do not enter into contracts with a third party) would have incremental costs related to compliance with part 43 beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* 76 FR 54,573. In the Adopting Release, the Commission stated that each SDR would have: (i) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (ii) non-recurring costs to publicly disseminate ($601,003 per SDR); and (iii) recurring costs to publicly disseminate ($360,602 per SDR). *See* 77 FR 1,238.

[368] This estimate is calculated as follows: (Sr. Programmer at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 34 hours per SDR. A senior programmer has adjusted hourly wages of $81.52. A senior systems analyst has adjusted hourly wages of $64.50. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21. *See* note 316 *supra.*

[369] *See* proposed § 43.6(c)(1).

[370] *See* proposed § 43.6(c)(2).

[371] This benefit is consistent with one of the considerations for implementation identified by ISDA and SIFMA in their January 18, 2011 report. *See* Block trade reporting for over-the-counter derivatives markets, note 54 supra.

in the alternative (*e.g.,* requiring market participants and/or registered entities to set cap sizes for the entire swaps market). An alternative approach could lead to market fragmentation, adverse effects on market liquidity, or reduced price transparency.

5. Application of the Section 15(a) Factors to the Proposed Amendments to § 43.4

As noted above, section 15(a) directs the Commission to consider five particular areas in evaluating the costs and benefits of a particular Commission action. These five areas with respect to proposed amendments to § 43.4 are considered below.

a. Protection of Market Participants and the Public

The Commission anticipates that the proposed amendments to § 43.4 would ensure the protection of swap counterparty anonymity on an ongoing basis. While cap sizes for some transactions could exceed appropriate minimum block sizes in certain circumstances (resulting in the public dissemination of notional/principal-amount information after a time delay), the Commission intends and expects that for the vast majority of (if not all) impacted swap transactions, the proposed cap-size process and methodology is sufficient to distinguish correctly between those for which masking of notional or principal amount is required to maintain anonymity and those for which it is not.[372]

b. Efficiency, Competitiveness and Financial Integrity [373]

The Commission anticipates that proposed amendments to § 43.4(h) would promote market efficiencies and competitiveness since the proposed approach would provide market participants with the ability to continue transacting swaps with the protection of anonymity, while promoting greater price transparency.

The Commission has identified no potential impact on financial integrity that would result from the implementation of the proposed election process.

c. Price Discovery

As noted above, the Commission anticipates that the proposed cap size amendments to § 43.4(h) would benefit market participants, registered entities and the general public by providing greater price transparency with respect to swaps with notional amounts that fall in between the post-initial appropriate minimum block size and post-initial cap size for a particular swap category. During the post-initial period, the Commission would set appropriate minimum block sizes based on the 67-percent notional amount calculation [374] and cap sizes based on the 75-percent notional amount calculation.[375] Although swaps with notional amounts that fall in between these two sizes would be subject to a time delay, the exact notional amounts of these swaps eventually would be publicly disclosed.

The proposed masking provisions in the amendment to § 43.4(d)(4) and proposed appendix D to part 43 could furt-er benefit market participants, registered entities and the general public by enhancing price discovery with respect to swaps that currently are not required to be publicly disclosed under part 43. The proposed amendment creating new § 43.4(d)(4)(iii) would require the public dissemination of data on these swaps. The Commission anticipates that the real-time public reporting of these swaps would enhance price discovery in the other commodity asset class.

d. Sound Risk Management Practices

To the extent that the proposed amendments to § 43.4 mask the identity, business transactions and market positions of swap counterparties, the Commission anticipates that the proposed amendments to § 43.4 would preserve the viability of swaps as a risk management tool for those traders that otherwise might feel compelled to switch to a less well-suited risk management tool.

e. Other Public Interest Considerations

The Commission does not anticipate that the proposed amendment to § 43.4(h) would have a material effect on public interest considerations other than those identified above.

6. Specific Questions Regarding the Proposed Amendments to § 43.4

The Commission requests comments on its cost and benefit considerations with respect to the proposed amendments to § 43.4. While commenters are welcome to comment on all aspects of this Further Proposal, the Commission is particularly interested in the following:

Q105. Please provide comments regarding the Commission's estimates of direct and indirect costs to SDRs of the proposed amendments to § 43.4.

Q105a. Please provide comments regarding any potential direct or indirect costs to non-financial end-users.

Q106. Please provide comments regarding views on the accuracy and/or inaccuracy of the facts cited in support of the Commission's analysis of the identified considerations relating to the proposed anonymity protections.

Q107. Are there any other public interest considerations not discussed above that the Commission should examine in finalizing the proposed amendments to § 43.4?

Q108. Please provide comments regarding the sufficiency of the Commission's proposed rules to protect market participant anonymity and whether the rules could be expected to cause certain swap counterparties to forego swap transactions and, if so, the magnitude of any likely liquidity impact.

VII. Example of a Post-Initial Appropriate Minimum Block Size Determination Using the 67-Percent Notional Amount Calculation

The example below describes the steps necessary for the Commission to determine the post-initial appropriate minimum block size based on § 43.6(c)(1) for a sample set of data in ''Swap Category Z.'' For the purposes of this example, Swap Category Z had 35 transactions over the given observation period. The observations are described in table A below and are ordered by time of execution (*i.e.,* Transaction #1 was executed prior to Transaction #2).

[372] The Commission recognizes that adoption of rules that delineate cap sizes insufficient to provide anonymity could cause prospective counterparties to forego swap transactions, thus adversely impacting market liquidity.

[373] Although by its terms, section 15(a)(2)(B) applies to futures and not swaps, the Commission finds this factor useful in analyzing the costs and benefits of swaps regulation, as well. 7 U.S.C. 19(a)(2)(B).

[374] *See* proposed § 43.6(c)(1).

[375] *See* proposed § 43.6(c)(2).

Table A – Swap Category Z Transactions

Transaction #1	Transaction #2	Transaction #3	Transaction #4	Transaction #5
5,000,000	25,000,000	50,000,000	1.05	3,243,571
Transaction #6	Transaction #7	Transaction #8	Transaction #9	Transaction #10
100,000,000	525,000,000	10,000,000	15,000,000	25,000,000
Transaction #11	Transaction #12	Transaction #13	Transaction #14	Transaction #15
100,000,000	265,000,000	25,000,000	100,000,000	100,000,000
Transaction #16	Transaction #17	Transaction #18	Transaction #19	Transaction #20
100,000,000	150,000,000	50,000,000	100,000,000	50,000,000
Transaction #21	Transaction #22	Transaction #23	Transaction #24	Transaction #25
75,000,000	82,352,124	100,000,000	1,235,726	60,000,000
Transaction #26	Transaction #27	Transaction #28	Transaction #29	Transaction #30
100,000,000	50,000,000	50,000,000	100,000,000	100,000,000
Transaction #31	Transaction #32	Transaction #33	Transaction #34	Transaction #35
100,000,000	100,000,000	32,875,000	50,000,000	440,000,000

Step 1: Remove the transactions that do not fall within the definition of ''publicly reportable swap transactions'' as described in § 43.2.

In this example, assume that five of the 35 transactions in Swap Category Z do not fall within the definition of ''publicly reportable swap transaction.'' These five transactions, listed in table B below would be removed for the data set that will be used to determine the post-initial appropriate minimum block size.

TABLE B—TRANSACTIONS THAT DO NOT FALL WITHIN THE DEFINITION OF ''PUBLICLY REPORTABLE SWAP TRANSACTION''

Transaction #4	Transaction #13	Transaction #16	Transaction #20	Transaction #21
1.05	25,000,000	100,000,000	50,000,000	75,000,000

Step 2A: Convert the publicly reportable swap transactions in the swap category to the same currency or units.

In order to accurately compare the transactions in a swap category and apply the appropriate minimum block size calculation, the transactions must be converted to the same currency or unit.

In this example, the publicly reportable swap transactions were all denominated in U.S. dollars, so no conversion was necessary. If the notional amounts of any of the publicly reportable swap transactions in Swap Category Z had been denominated in a currency other than U.S. dollars, then the notional amounts of such publicly reportable swap transactions would have been adjusted by the daily exchange rates for the period to arrive at the U.S. dollars equivalent notional amount.

Step 2B: Examine the remaining data set for any outliers and remove any such outliers, resulting in a trimmed data set.

The publicly reportable swap transactions are examined to identify any outliers. If an outlier is discovered, then it would be removed from the data set. To conduct this analysis, the notional amounts of all of the publicly reportable swap transactions remaining after step 1 and step 2A are transformed by Log_{10}. The average and standard deviation (''STDEV'') of these transformed notional amounts would then be calculated. Any transformed notional amount of a publicly reportable swap transaction that is larger than the average of all transformed notional amounts plus four times the standard deviation would be omitted from the data set as an outlier.

In the data set used in this example, none of the observations were large enough to qualify as an outlier, as shown in the calculations described in Table C.

Table C – Testing for Outliers in the Publicly Reportable Swap Transaction Data Set

Log10 Average	7.75	4*STDEV+Average	10.2
Log10 STDEV	0.611359	Omitted Values	None
4* STDEV	2.45		

Step 3: Sum the notional amounts of the remaining publicly reportable swap transactions in the data set resulting after step 2B. Note: The notional amounts being summed in this step are the original amounts following step 2A

and not the Log_{10} transformed amounts used for the process in step 2B used to identify and omit any outliers.

Using the equation described immediately below, the notional amounts are added to determine the sum total of all notional amounts remaining in the data set for a particular swap category. In this example, the notional amounts of the 30 remaining publicly reportable swap transactions in Swap Category Z are added together to come up with a net value of 2,989,706,421.

$$\sum_{i=1}^{30} Ti_{\square} = PRST_{NV}$$

30 = Notional amount of swap transaction
i = Index variable of summation for the set
T_i = Indicator for publicly reportable swap transactions
$PRST_{NV}$ = Sum total of the notional amounts of all remaining publicly reportable swap transactions in the set

$PRST_{NV}$ =	2,989,706,421

Step 4: Calculate the 67 Percent Notional Amount.

Using the resulting amount from step 2B, a 67-percent notional amount value would be calculated by using the equation:

$PRST_{NV}$ * 0.67 = G

G = 67 percent of the sum total of the notional amounts of all remaining publicly reportable swap transactions in the set

G = 2,003,103,302

Step 5: Order and rank the observations based on notional amount of the publicly reportable swap transaction from least to greatest.

The remaining publicly reportable swap transactions having previously been converted to U.S. dollar equivalents must be ranked, based on the notional sizes of such transactions, from least to greatest. The resulting ranking yields the $PRST_t$. Table D below reflects the ranking of the remaining publicly reportable swap transactions based on their notional amount sizes for this example.

$PRST_t$ = a publicly reportable swap transaction in the data set ranked from least to greatest based on the notional amounts of such transactions.

Step 6A: Calculate the running sum of all $PRST_t$.

A running sum would be calculated by adding together the ranked and ordered publicly reportable swap transactions from step 5 ($PRST_t$) in least to greatest order. The calculations of running sum values with respect to this example are reflected in Table D below.

RS Values = Running sum values

Table D - $PRST_i$ Values and RS Values

	Rank Order #1	Rank Order #2	Rank Order #3	Rank Order #4	Rank Order #5
$PRST_i$ Values	1,235,726	3,243,571	5,000,000	10,000,000	15,000,000
RS Values	1,235,726	4,479,297	9,479,297	19,479,297	34,479,297
	Rank Order #6	Rank Order #7	Rank Order #8	Rank Order #9	Rank Order #10
$PRST_i$ Values	25,000,000	25,000,000	32,875,000	50,000,000	50,000,000
RS Values	59,479,297	84,479,297	117,354,297	167,354,297	217,354,297
	Rank Order #11	Rank Order #12	Rank Order #13	Rank Order #14	Rank Order #15
$PRST_i$ Values	50,000,000	50,000,000	50,000,000	60,000,000	82,352,124
RS Values	267,354,297	317,354,297	367,354,297	427,354,297	509,706,421
	Rank Order #16	Rank Order #17	Rank Order #18	Rank Order #19	Rank Order #20
$PRST_i$ Values	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000
RS Values	609,706,421	709,706,421	809,706,421	909,706,421	1,009,706,421
	Rank Order #21	Rank Order #22	Rank Order #23	Rank Order #24	Rank Order #25
$PRST_i$ Values	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000
RS Values	1,109,706,421	1,209,706,421	1,309,706,421	1,409,706,421	1,509,706,421
	Rank Order #26	Rank Order #27	Rank Order #28	Rank Order #29	Rank Order #30
$PRST_i$ Values	100,000,000	150,000,000	265,000,000	440,000,000	525,000,000
RS Values	1,609,706,421	1,759,706,421	2,024,706,421	2,464,706,421	2,989,706,421

Step 6B: Select first RS Value that is greater than or equal to G.

In this example, G is equal to 2,003,103,302, meaning that the RS Value that must be selected would have to be greater than that number. The first RS Value that is greater than or equal to G can be found in the observation that corresponds to Rank Order #28 (see Table D). The RS Value of the Rank Order #28 observation is 2,024,706,421.

Step 7: Select the $PRST_i$ that corresponds to the observation determined in step 6B.

In this example, the $PRST_i$ that corresponds to the RS Value determined in step 6B (Rank Order #28) is 265,000,000.

Step 8: Determine the rounded notional amount.

Calculate the rounded notional amount under the process described in the proposed amendment to § 43.2. The 265,000,000 amount would be rounded to the nearest 10 million for public dissemination, or 270,000,000.

Step 9: Set the appropriate minimum block size at the amount calculated in step 8.

In this example, the appropriate minimum block size for swap category Z would be 270,000,000 for the observation period.

Post-Initial Appropriate Minimum Block Size = $270,000,000

VIII. List of Commenters Who Responded to the Initial Proposal

1. Markit.
2. Asset Management Group of the Securities Industry and Financial Markets Association (''SIFMA AMG'').
3. Managed Funds Association (''MFA'').
4. Argus Media, Inc. (''Argus'').
5. J.P. Morgan (''JP Morgan'').
6. Gibson Dunn on behalf of the Coalition for Derivatives End-Users (''Coalition for Derivatives End-Users'').
7. Committee on Capital Markets Regulation (''CCMR'').
8. Goldman Sachs & Co. (''Goldman'').
9. Barclays Capital, Inc. (''Barclays'').
10. Air Transport Association (''ATA'').
11. Pacific Investment Management Company, LLC (''PIMCO'').
12. Committee on the Investment of Employee Benefit Assets & American Benefits Council (''ABC/CIEBA'').
13. Better Markets, Inc. (''Better Markets'').
14. Investment Company Institute (''ICI'').
15. MarkitSERV.
16. Coalition of Physical Energy Companies (''COPE'').
17. International Options Markets Association/World Federation of Exchanges (''World Federation of Exchanges'').
18. UBS Securities LLC (''UBS'').
19. Global Foreign Exchange Division of Association for Financial Markets in Europe (''AFME''), the Securities Industry and Financial Markets Association (''SIFMA'') and the Asia Securities Industry and Financial Markets Association (''ASIFMA'') (collectively, ''SIFMA/AFME/ASIFMA'').
20. CME Group, Inc. (''CME'').
21. Coalition of Energy End-Users.
22. International Swaps and Derivatives Association & Securities Industry and Financial Markets Association (''ISDA/SIFMA'').
23. Morgan Stanley.
24. Hunton & Williams LLP on behalf of the Working Group of Commercial Energy Firms (''Hunton & Williams'').
25. Freddie Mac.
26. Vanguard.
27. TriOptima.
28. BlackRock, Inc. (''BlackRock'').
29. Dominion Resources, Inc. (''Dominion'').
30. Sadis & Goldberg LLP (''Sadis & Goldberg'').
31. Metlife, Inc. (''Metlife'').
32. Wholesale Markets Brokers' Association, Americas (''WMBAA'').

33. Depository Trust & Clearing Corporation (''DTCC'').
34. Cleary Gottlieb on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi; Credit Agricole Corporate and Investment Bank; Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, In., PNC Bank, National Association, Société Générale, UBS Securities LLC, Wells Fargo & Company (''Cleary Gottlieb'').
35. Financial Industry Regulatory Authority (''FINRA'').
36. International Swaps and Derivatives Association (''ISDA'').
37. Association of Institutional Investors (''AII'').
38. Swaps & Derivatives Market Association (''SDMA'').

List of Subjects in 17 CFR Part 43

Real-time public reporting; Block trades; Large notional off-facility swaps; Reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 43, as proposed to be added at 77 FR 1,243, January 9, 2012, is proposed to be further amended as follows.

PART 43—REAL-TIME PUBLIC REPORTING

1. The authority citation for part 43 shall continue to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Amend § 43.2 by adding the following definitions in alphabetical order to read as follows:

§ 43.2 Definitions.

* * * * *

Cap size means, for each swap category, the maximum notional or principal amount of a publicly reportable swap transaction that is publicly disseminated.

* * * * *

Economically related means a direct or indirect reference to the same commodity at the same delivery location or locations, or with the same or a substantially similar cash market price series.

* * * * *

Futures-related swap means a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract.

Major currencies means the currencies, and the cross-rates between the currencies, of Australia, Canada, Denmark, New Zealand, Norway, South Africa, South Korea, Sweden, and Switzerland.

Non-major currencies means all other currencies that are not super-major currencies or major currencies.

* * * * *

Physical commodity swap means a swap in the other commodity asset class that is based on a tangible commodity.

* * * * *

Reference price means a floating price series (including derivatives contract prices and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged or accrued under the terms of a swap contract.

* * * * *

Super-major currencies means the currencies of the European Monetary Union, Japan, United Kingdom, and United States.

* * * * *

Swaps with composite reference prices means swaps based on reference prices that are composed of more than one reference price from more than one swap category.

Trimmed data set means a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond four standard deviations above the mean.

* * * * *

3. Revise section 43.4(h) to read as follows:

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

* * * * *

(h) *Cap sizes.* (1) *Initial cap sizes.* Prior to the effective date of a Commission determination to establish an applicable post-initial cap size for a swap category as determined pursuant to paragraph (h)(2), the initial cap sizes for each swap category shall be equal to the greater of the initial appropriate minimum block size for the respective swap category in appendix F to this part or the respective cap sizes in paragraphs (h)(1)(i) through (v) of this section. If appendix F to this part does not provide an initial appropriate minimum block size for a particular swap category, the initial cap size for such swap category shall be equal to the appropriate cap size as set forth in paragraphs (h)(1)(i) through (v) of this section.

(i) For swaps in the interest rate asset class, the publicly disseminated notional or principal amount for an interest rate swap subject to the rules in this part 43 the cap size shall be:

(A) USD 250 million swaps with a tenor greater than zero up to and including two years;

(B) USD 100 million for swaps with a tenor greater than two years up to and including ten years; and

(C) USD 75 million for swaps with a tenor greater than ten years;

(ii) For swaps in the credit asset class, the publicly disseminated notional or principal amount for a credit swap subject to the rules in this part 43 shall be USD 100 million;

(iii) For swaps in the equity asset class, the publicly disseminated notional or principal amount for an equity swap subject to the rules in this part 43 shall be USD 250 million;

(iv) For swaps in the foreign exchange asset class, the publicly disseminated notional or principal amount for a foreign exchange swap subject to the rules in this part 43 shall be USD 250 million; and

(v) For swaps in the other commodity asset class, the publicly disseminated notional or principal amount for any other commodity swap subject to the rules in this part 43 shall be USD 25 million.

(2) *Post-initial cap sizes.* Pursuant to the process described in § 43.6(f)(1), the Commission shall establish post-initial cap sizes using reliable data collected by registered swap data repositories, as determined by the Commission, based on the following:

(i) A three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) of swap transaction and pricing data corresponding to each relevant swap category recalculated no less than once each calendar year; and

(ii) The 75-percent notional amount calculation described in paragraph (c)(2) of this section applied to the swap transaction and pricing data described in paragraph (h)(2)(i) of this section.

(3) *Commission publication of post-initial cap sizes.* The Commission shall publish post-initial cap sizes on its Web site at *http://www.cftc.gov*.

(4) *Effective date of post-initial cap sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial cap sizes shall be effective on the first day of the second month following the date of publication. * * *

4. Amend § 43.4(d)(4)(i) by deleting ''§ 43.4(d)(4)(ii).'' and replacing it with ''§§ 43.4(d)(4)(ii) and (iii).''

5. Amend § 43.4(d)(4)(ii)(B) by deleting ''; and'' and replacing it with ''; or''; and

6. Add § 43.4(d)(4)(iii) to read as follows:

(iii) The underlying assets of swaps in the other commodity asset class that are not described in 43.4(d)(4)(ii) shall be publicly disseminated by limiting the geographic detail of the underlying assets. The identification of any specific delivery point or pricing point associated with the underlying asset of such other commodity swap shall be publicly disseminated pursuant to appendix E to this part.

7. Add section 43.6 to part 43 to read as follows:

§ 43.6 Block trades and large notional off-facility swaps.

(a) *Commission determination.* The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in § 43.6(b) in accordance with the provisions set forth in §§ 43.6(c), (d), (e), (f) or (h), as applicable.

(b) *Swap categories.* Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) *Interest rates asset class.* Interest rate asset class swap categories shall be based on unique combinations of the following:

(i) Currency by:

(A) Super-major currency;

(B) Major currency; or

(C) Non-major currency; and

(ii) Tenor of swap as follows:

(A) Zero to three months (0 to 107 days);

(B) Three months to six months (108 to 198 days);

(C) Greater than six months to one year (199 to 381 days);

(D) Greater one to two years (382 to 746 days);

(E) Greater than two to five years (747 to 1,842 days);

(F) Greater than five to ten years (1,843 to 3,668 days);

(G) Greater than ten to 30 years (3,669 to 10,973 days); or

(H) Greater than 30 years (10,974 days and above).

(2) *Credit asset class.* Credit asset class swap categories shall be based on unique combinations of the following:

(i) Traded Spread rounded to the nearest basis point (0.01) as follows:

(A) 0 to 175 points;

(B) 176 to 350 points; or

(C) 351 points and above; and

(ii) Tenor of swap as follows:

(A) Zero to two years (0–746 days);

(B) Greater than two to four years (747–1,476 days);

(C) Greater than four to six years (1,477–2,207 days)

(D) Greater than six to eight-and-a-half years (2,208–3,120 days);

(E) Greater than eight-and-a-half to 12.5 years (3,121–4,581 days); and

(F) Greater than 12.5 years (4,581 days and above).

(3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.

(4) *Foreign exchange asset class.* Swap categories in the foreign exchange asset class shall be grouped as follows:

(i) By the unique currency combinations of super-major currencies, major currencies and the currencies of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or

(ii) By unique currency combinations not included in subparagraph (i) of this section.

(5) *Other commodity asset class.* Swap contracts in the other commodity asset class shall be grouped into swap categories as follows:

(i) For swaps that are economically related to contracts in appendix B to this part, by the relevant contract as referenced in appendix B to this part; or

(ii) For swaps that are not economically related to contracts in appendix B to this part, by the following futures-related swaps—

(A) CME Cheese;

(B) CBOT Distillers' Dried Grain;

(C) CBOT Dow Jones-UBS Commodity Index Excess Return;

(D) CBOT Ethanol;

(E) CME Frost Index;

(F) CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index);

(G) NYMEX Gulf Coast Gasoline;

(H) NYMEX Gulf Coast Sour Crude Oil;

(I) NYMEX Gulf Coast Ultra Low Sulfur Diesel;

(J) CME Hurricane Index;

(K) CME International Skimmed Milk Powder;

(L) NYMEX New York Harbor Ultra Low Sulfur Diesel;

(M) CME Nonfarm Payroll;

(N) CME Rainfall Index;

(O) CME Snowfall Index;

(P) CME Temperature Index;

(Q) CME U.S. Dollar Cash Settled Crude Palm Oil; or

(R) CME Wood Pulp; or

(iii) For swaps that are not covered in subparagraphs (i) and (ii) of this section, the relevant product type as referenced in appendix D to this part.

(c) *Methodologies to determine appropriate minimum block sizes and cap sizes.* In determining appropriate minimum block sizes and cap sizes for publicly reportable swap transactions, the Commission shall utilize the following statistical calculations—

(1) *67-percent notional amount calculation.* The Commission shall use the following procedure in determining the 67-percent notional amount calculation: (i) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (ii) convert to the same currency or units and use a trimmed data set; (iii) determine the sum of the notional amounts of swaps in the trimmed data set; (iv) multiply the sum of the notional amount by 67 percent; (v) rank order the observations by notional amount from least to greatest; (vi) calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in (iv); (vii) select the notional amount associated with that observation; (viii) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (ix) set the appropriate minimum block size at the amount calculated in (viii).

(2) *75-percent notional amount calculation.* The Commission shall use the following procedure in determining the 75-percent notional amount calculation: (i) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (ii) convert to the same currency or units and use a trimmed data set; (iii) determine the sum of the notional amounts of swaps in the trimmed data set; (iv) multiply the sum of the notional amount by 75 percent; (v) rank order the observations by notional amount from least to greatest; (vi) calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 75-percent notional amount calculated in (iv); (vii) select the notional amount associated with that observation; (viii) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (ix) set the appropriate minimum block size at the amount calculated in (viii).

(d) *No appropriate minimum block sizes for swaps in the equity asset class.*

Publicly reportable swap transactions in the equity asset class shall not be treated as block trades or large notional off-facility swaps.

(e) *Initial appropriate minimum block sizes.* Prior to the Commission making a determination as described in paragraph (f)(1) of this section, the following initial appropriate minimum block sizes shall apply:

(1) *Prescribed appropriate minimum block sizes.* Except as otherwise provided in paragraph (e)(1) of this section, for any publicly reportable swap transaction that falls within the swap categories described in §§ 43.6(b)(1), (b)(2), (b)(4)(i), (b)(5)(i) and (b)(5)(ii), the initial appropriate minimum block size for such publicly reportable swap transaction shall be the appropriate minimum block size that is in appendix F to this part.

(2) *Certain swaps in the foreign exchange and other commodity asset classes.* All swaps or instruments in the swap categories described in §§ 43.6(b)(4)(ii) and (b)(5)(iii) shall be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(3) *Exception.* Publicly reportable swap transactions described in § 43.6(b)(5)(i) that are economically related to a futures contract in appendix B to this part shall not qualify to be treated as block trades or large notional off-facility swaps (as applicable), if such futures contract is not subject to a designated contract market's block trading rules.

(f) *Post-initial process to determine appropriate minimum block sizes.*

(1) *Post-initial period.* After a registered swap data repository has collected at least one year of reliable data for a particular asset class, as determined by Commission, the Commission shall establish by swap categories, the post-initial appropriate minimum block sizes as described in this subsection. No less than once each calendar year thereafter, the Commission shall update the post-initial appropriate minimum block sizes.

(2) *Post-initial appropriate minimum block sizes certain swaps.* The Commission shall determine post-initial appropriate minimum block sizes for the swap categories described in §§ 43.6(b)(1), (b)(2), (b)(4) and (b)(5) by utilizing a three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) of swap transaction and pricing data corresponding to each relevant swap category reviewed no less than once each calendar year, and by applying the 67-percent notional amount calculation to such data.

(3) *Commission publication of post-initial appropriate minimum block sizes.* The Commission shall publish the appropriate minimum block sizes determined pursuant to § 43.6(f)(1) on its Web site at *http://www.cftc.gov*.

(4) *Effective date of post-initial appropriate minimum block sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial appropriate minimum block sizes described in § 43.6(f)(1) shall be effective on the first day of the second month following the date of publication.

(g) *Required notification.*

(1) *Block trade election.* (i) The parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size shall notify the registered swap execution facility or designated contract market, as applicable, pursuant to the rules of such registered swap execution facility or designated contract market, of its election to have the publicly reportable swap transaction treated as a block trade.

(ii) The registered swap execution facility or designated contract market, as applicable, pursuant to the rules of which a block trade is executed shall notify the registered swap data repository of such a block trade election when transmitting swap transaction and pricing data to such swap data repository in accordance with § 43.3(b)(1).

(2) *Large notional off-facility swap election.* A reporting party who executes an off-facility swap that has a notional amount at or above the appropriate minimum block size shall notify the applicable registered swap data repository that such swap transaction qualifies as a large notional off-facility swap concurrent with the transmission of swap transaction and pricing data in accordance with part 43.

(h) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of swaps with optionality shall equal the notional amount of the component of the swap that does not include the option component.

(2) *Swaps with composite reference prices.* The parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component swap category of such publicly reportable swap transaction.

(3) *Notional amounts for physical commodity swaps.* Unless otherwise specified in this part, the notional amount for a physical commodity swap shall be based on the notional unit measure utilized in the related futures contract market or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity.

(4) *Currency conversion.* Unless otherwise specified in this part 43, when the appropriate minimum block size or cap size for a publicly reportable swap transaction is denominated in a currency other than U.S. dollars, parties to a swap and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification.

(5) *Successor currencies.* For currencies that succeed a super-major currency, the appropriate currency classification for such currency shall be based on the corresponding nominal gross domestic product classification (in U.S. dollars) as determined in the most recent World Bank, World Development Indicator at the time of succession. If the gross domestic product of the country or nation utilizing the successor currency is:

(i) Greater than $2 trillion, then the successor currency shall be included among the super-major currencies;

(ii) Greater than $500 billion but less than $2 trillion, then the successor currency shall be included among the major currencies; or

(iii) Less than $500 billion, then the successor currency shall be included among the non-major currencies.

8. Add section 43.7 to part 43 to read as follows:

§ 43.7 Delegation of authority.

(a) *Authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) To determine whether swaps fall within specific swap categories as described in § 43.6(b);

(2) To determine post-initial, appropriate minimum block sizes as described in § 43.6(f); and

(3) To determine post-initial cap sizes as described in § 43.4(h).

(b) *Submission* for Commission consideration. The Director of the Division of Market Oversight may submit to the Commission for its

consideration any matter that has been delegated pursuant to this section.

(c) *Commission reserves authority.* Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section. * * *

9. *Amend* appendix B to part 43 to add the following after ''Brent Crude Oil (ICE)'':

SP–15 Financial Day-Ahead LMP Peak Contract
SP–15 Financial Day-Ahead LMP Off-Peak Contract
PJM WH Real Time Peak Contract
PJM WH Real Time Off-Peak Contract
Mid-C Financial Peak Contract
Mid-C Financial Off-Peak Contract
ICE Chicago Financial Basis Contract
HSC Financial Basis Contract
Socal Border Financial Basis Contract
Waha Financial Basis Contract
AECO Financial Basis Contract
NWP Rockies Financial Basis Contract
PG&E Citygate Financial Basis Contract

10. Add ''Appendix D to Part 43—Other Commodity Swap Categories'' after ''Appendix C to Part 43—Time Delays for Public Dissemination'' to read as follows:

Appendix D—Other Commodity Swap Categories

Other Commodity Group

Individual Other Commodity

GRAINS
  OATS
  WHEAT
  CORN
  RICE
  GRAINS—OTHER
LIVESTOCK/MEAT PRODUCTS
  LIVE CATTLE
  PORK BELLIES
  FEEDER CATTLE
  LEAN HOGS
  LIVESTOCK/MEAT PRODUCTS–OTHER
DAIRY PRODUCTS
  MILK
  BUTTER
  CHEESE
  DAIRY PRODUCTS—OTHER
OILSEED AND PRODUCTS
  SOYBEAN OIL
  SOYBEAN MEAL
  SOYBEANS
  OILSEED AND PRODUCTS—OTHER
FIBER
  COTTON
  FIBER—OTHER
FOODSTUFFS/SOFTS
  COFFEE
  FROZEN CONCENTRATED ORANGE JUICE
  SUGAR
  COCOA
  FOODSTUFFS/SOFTS—OTHER
PETROLEUM AND PRODUCTS
  JET FUEL
  ETHANOL
  BIODIESEL
  FUEL OIL
  HEATING OIL
  GASOLINE
  NAPHTHA
  CRUDE OIL
  DIESEL
  PETROLEUM AND PRODUCTS—OTHER
NATURAL GAS AND RELATED PRODUCTS
  NATURAL GAS LIQUIDS
  NATURAL GAS
  NATURAL GAS AND RELATED PRODUCTS—OTHER
ELECTRICITY AND SOURCES
  COAL
  ELECTRICITY
  URANIUM
  ELECTRICITY AND SOURCES—OTHER
PRECIOUS METALS
  PALLADIUM
  PLATINUM
  SILVER
  GOLD
  PRECIOUS METALS—OTHER
BASE METALS
  STEEL
  COPPER
  BASE METALS—OTHER
WOOD PRODUCTS
  LUMBER
  PULP
  WOOD PRODUCTS—OTHER
REAL ESTATE
  REAL ESTATE
CHEMICALS
  CHEMICALS
PLASTICS
  PLASTICS
EMISSIONS
  EMISSIONS
WEATHER
  WEATHER
MULTIPLE COMMODITY INDEX
  MULTIPLE COMMODITY INDEX
OTHER AGRICULTURAL
  OTHER AGRICULTURAL
OTHER NON-AGRICULTURAL
  OTHER NON-AGRICULTURAL

11. Add ''Appendix E to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)'' after ''Appendix D to Part 43—Other Commodity Product Swap Categories'' to read as follows:

Appendix E—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)

Registered swap data repositories shall publicly disseminate any specific delivery point or pricing point associated with publicly reportable swap transactions in the ''other commodity'' asset class (as described in § 43.4(d)(4)(iii)) pursuant to Tables E1 and E2. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(4)(iii) has a delivery or pricing point that is located in the United States, such information shall be publicly disseminated pursuant to the regions described in Table E1. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(4)(iii) has a delivery or pricing point that is not located in the United States, such information shall be publicly disseminated pursuant to the countries or sub-regions, or if no country or sub-region, by the other commodity region, described in Table E2.

Table E1—U.S. Delivery or Pricing Points

Other Commodity Group

Region

NATURAL GAS AND RELATED PRODUCTS
  MIDWEST
  NORTHEAST
  GULF
  SOUTHEAST
  WESTERN
  OTHER—U.S.
PETROLEUM AND PRODUCTS
  NEW ENGLAND (PADD 1A)
  CENTRAL ATLANTIC (PADD 1B)
  LOWER ATLANTIC (PADD 1C)
  MIDWEST (PADD 2)
  GULF COAST (PADD 3)
  ROCKY MOUNTAINS (PADD 4)
  WEST COAST (PADD 5)
  OTHER—U.S.
ELECTRICITY AND SOURCES
  CALIFORNIA (CAISO)
  MIDWEST (MISO)
  NEW ENGLAND (ISO–NE)
  NEW YORK (NYISO)
  NORTHWEST
  PJM
  SOUTHEAST
  SOUTHWEST
  SOUTHWEST POWER TOOL (SPP)
  TEXAS (ERCOT)
  OTHER—U.S.
ALL REMAINING OTHER COMMODITIES (PUBLICLY DISSEMINATE THE REGION. IF PRICING OR DELIVERY POINT IS NOT REGION SPECIFIC, INDICATE ''U.S.'')
  REGION 1—(INCLUDES CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, VERMONT)
  REGION 2—(INCLUDES NEW JERSEY, NEW YORK)
  REGION 3—(INCLUDES DELAWARE, DISTRICT OF COLUMBIA, MARYLAND, PENNSYLVANIA, VIRGINIA, WEST VIRGINIA)
  REGION 4—(INCLUDES ALABAMA, FLORIDA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, SOUTH CAROLINA, TENNESSEE)
  REGION 5—(INCLUDES ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, OHIO, WISCONSIN)
  REGION 6—(INCLUDES ARKANSAS, LOUISIANA, NEW MEXICO, OKLAHOMA, TEXAS)
  REGION 7—(INCLUDES IOWA, KANSAS, MISSOURI, NEBRASKA)
  REGION 8—(INCLUDES COLORADO, MONTANA, NORTH DAKOTA, SOUTH DAKOTA, UTAH, WYOMING)
  REGION 9—(INCLUDES ARIZONA, CALIFORNIA, HAWAII, NEVADA)
  REGION 10—(INCLUDES ALASKA, IDAHO, OREGON, WASHINGTON)

Table E2—Non-U.S. Delivery or Pricing Points

Other Commodity Regions With Countries or Sub-Regions

NORTH AMERICA (OTHER THAN U.S.)

CANADA
MEXICO
CENTRAL AMERICA
SOUTH AMERICA
BRAZIL
OTHER SOUTH AMERICA
EUROPE
WESTERN EUROPE
NORTHERN EUROPE
SOUTHERN EUROPE
EASTERN EUROPE (EXCLUDING RUSSIA)
RUSSIA
AFRICA
NORTHERN AFRICA
WESTERN AFRICA
EASTERN AFRICA
CENTRAL AFRICA
SOUTHERN AFRICA
ASIA-PACIFIC
NORTHERN ASIA (EXCLUDING RUSSIA)
CENTRAL ASIA
EASTERN ASIA
WESTERN ASIA
SOUTHEAST ASIA
AUSTRALIA/NEW ZEALAND/PACIFIC ISLANDS

12. Add ''Appendix F to Part 43—Initial Appropriate Minimum Sizes for Block Trades and Large Notional Off-facility Swaps'' after ''Appendix E to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)(B)'' to read as follows:

APPENDIX F—INITIAL APPROPRIATE MINIMUM BLOCK SIZES BY ASSET CLASS

Currency group	Currencies
Super-Major Currencies	United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).
Major Currencies	Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK), and Denmark krone (DKK).
Non-Major Currencies	All other currencies.

INTEREST RATE SWAPS

Currency group	Tenor greater than	Tenor less than or equal to	67% Notional (in millions)
Super-Major		Three months (107 days)	6,400
Super-Major	Three months (107 days)	Six months (198 days)	1,900
Super-Major	Six months (198 days)	One year (381 days)	1,600
Super-Major	One year (381 days)	Two years (746 days)	750
Super-Major	Two years (746 days)	Five years (1,842 days)	380
Super-Major	Five years (1,842 days)	Ten years (3,668 days)	290
Super-Major	Ten years (3,668 days)	30 years (10,973 days)	210
Super-Major	30 years (10,973 days)		130
Major		Three months (107 days)	970
Major	Three months (107 days)	Six months (198 days)	470
Major	Six months (198 days)	One year (381 days)	320
Major	One year (381 days)	Two years (746 days)	190
Major	Two years (746 days)	Five years (1,842 days)	110
Major	Five years (1,842 days)	Ten years (3,668 days)	73
Major	Ten years (3,668 days)	30 years (10,973 days)	50
Major	30 years (10,973 days)		22
Non-Major		Three months (107 days)	320
Non-Major	Three months (107 days)	Six months (198 days)	240
Non-Major	Six months (198 days)	One year (381 days)	160
Non-Major	One year (381 days)	Two years (746 days)	79
Non-Major	Two years (746 days)	Five years (1,842 days)	40
Non-Major	Five years (1,842 days)	Ten years (3,668 days)	22
Non-Major	Ten years (3,668 days)	30 years (10,973 days)	24
Non-Major	30 years (10,973 days)		22

CREDIT SWAPS

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	67% Notional (in millions)
Less than or equal to 175		Two years (746 days)	510
Less than or equal to 175	Two years (746 days)	Four years (1,477 days)	300
Less than or equal to 175	Four years (1,477 days)	Six years (2,207 days)	190
Less than or equal to 175	Six years (2,207 days)	Eight years and six months (3,120 days).	250
Less than or equal to 175	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	130
Less than or equal to 175	Twelve years and six months (4,581 days).		110
Greater than 175 and less than or equal to 350.		Two years (746 days)	210
Greater than 175 and less than or equal to 350.	Two years (746 days)	Four years (1,477 days)	130
Greater than 175 and less than or equal to 350.	Four years (1,477 days)	Six years (2,207 days)	36

CREDIT SWAPS—Continued

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	67% Notional (in millions)
Greater than 175 and less than or equal to 350.	Six years (2,207 days)	Eight years and six months (3,120 days).	26
Greater than 175 and less than or equal to 350.	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	64
Greater than 175 and less than or equal to 350.	Twelve years and six months (4,581 days).		120
Greater than 350		Two years (746 days)	110
Greater than 350	Two years (746 days)	Four years (1,477 days)	73
Greater than 350	Four years (1,477 days)	Six years (2,207 days)	51
Greater than 350	Six years (2,207 days)	Eight years and six months (3,120 days).	21
Greater than 350	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	21
Greater than 350	Twelve years and six months (4,581 days).		51

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Foreign Exchange Swaps

		Super-major currencies			
		EUR (Euro)	GBP (British Pound)	JPY (Japanese Yen)	USD (U.S. Dollar)
Super-major currencies	EUR		6,250,000	6,250,000	18,750,000
	GBP	6,250,000*		6,250,000	6,250,000
	JPY	6,250,000*	6,250,000*		1,875,000,000
	USD	18,750,000*	6,250,000*	1,875,000,000*	
Major currencies	AUD	6,250,000*	-	10,000,000	10,000,000
	CAD	6,250,000*	-	10,000,000	10,000,000
	CHF	6,250,000*	6,250,000*	12,500,000	12,500,000
	DKK				
	KRW	-	-	-	6,250,000,000
	SEK	6,250,000*	-	-	10,000,000
	NOK	6,250,000*	-	-	10,000,000
	NZD	-	0	0	5,000,000
	ZAR	-	-	-	25,000,000
Non-major currencies	BRL	-	0	0	5,000,000
	CZK	200,000,000	0	0	200,000,000
	HUF	1,500,000,000	0	0	1,500,000,000
	ILS	0	0	0	50,000,000
	MXN	0	0	0	50,000,000
	PLN	25,000,000	0	0	25,000,000
	RMB	50,000,000	0	50,000,000	50,000,000
	RUB	-	0	0	125,000,000
	TRY	6,250,000*	0	0	10,000,000*

All values that do not have an asterisk are denominated in the currency of the left hand side. All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

		AUD (Australian Dollar)	CAD (Canadian Dollars)	CHF (Swiss Francs)	DKK (Danish Krone)	KRW (Korean Won)	SEK (Swedish Kronor)	NOK (Norwegian Krone)	NZD (New Zealand Dollar)	ZAR (South African Rand)
Super-major currencies	EUR	6,250,000	6,250,000	6,250,000		-	6,250,000	6,250,000	-	-
	GBP	-	-	6,250,000		-	-	-	0	-
	JPY	10,000,000*	10,000,000*	12,500,000 *		-	-	-	0	-
	USD	10,000,000*	10,000,000*	12,500,000 *		6,250,000,000*	10,000,000 *	10,000,000 *	5,000,000 *	25,000,000*
Major currencies	AUD		10,000,000	-		-	-	-	10,000,000	-
	CAD	10,000,000*		-		-	-	-	0	-
	CHF	-	-			-	-	-	0	-
	DKK									
	KRW	-	-	-			-	-	0	-
	SEK	-	-	-		-		-	0	-
	NOK	-	-	-		-	-		0	-
	NZD	10,000,000*	-	-		0	0	0	-	0
	ZAR	-	-	-		-	-	-	0	
Non-major currencies	BRL	0	0	0		0	0	0	0	0
	CZK	0	0	0		0	0	0	0	0
	HUF	0	0	0		0	0	0	0	0
	ILS	0	0	0		0	0	0	0	0
	MXN	0	0	0		0	0	0	0	0
	PLN	0	0	0		0	0	0	0	0
	RMB	0	0	0		0	0	0	0	0
	RUB	0	0	0		0	0	0	0	0
	TRY	0	0	0		0	0	0	0	0

All values that do not have an asterisk are denominated in the currency of the left hand side. All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

		BRL (Brazilian Real)	CZK (Czech Koruna)	HUF (Hungarian Forint)	ILS (Israeli Shekel)	MXN (Mexican Peso)	PLN (Polish Zloty)	RMB (Chinese Renminbi)	RUB (Russian Ruble)	TRY (Turkish Lira)
Super-major currencies	EUR	0	200,000,000 *	1,500,000,000 *	0	0	25,000,000 *	50,000,000 *	0	6,250,000
	GBP	0	0	0	0	0	0	0	0	0
	JPY	0	0	0	0	0	0	50,000,000 *	0	0
	USD	5,000,000 *	200,000,000 *	1,500,000,000 *	50,000,000 *	50,000,000 *	25,000,000 *	50,000,000 *	125,000,000 *	10,000,000
Major currencies	AUD	0	0	0	0	0	0	0	0	0
	CAD	0	0	0	0	0	0	0	0	0
	CHF	0	0	0	0	0	0	0	0	0
	DKK									
	KRW	0	0	0	0	0	0	0	0	0
	SEK	0	0	0	0	0	0	0	0	0
	NOK	0	0	0	0	0	0	0	0	0
	ZAR	0	0	0	0	0	0	0	0	0
Non-major currencies	BRL		0	0	0	0	0	0	0	0
	CZK	0		0	0	0	0	0	0	0
	HUF	0	0		0	0	0	0	0	0
	ILS	0	0	0		0	0	0	0	0
	MXN	0	0	0	0		0	0	0	0
	NZD	0	0	0	0	0	0	0	0	0
	PLN	0	0	0	0	0		0	0	0
	RMB	0	0	0	0	0	0		0	0
	RUB	0	0	0	0	0	0	0		0
	TRY	0	0	0	0	0	0	0	0	

All values that do not have an asterisk are denominated in the currency of the left hand side. All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

Other Commodity Swaps

Related Futures Contract	Initial Appropriate Minimum Block Size	Units
AECO Financial Basis Contract	25,000,000	dollars
Brent Crude (ICE and NYMEX)	100,000	bbl.
Cheese (CME)	400,000	lbs.
Class III Milk (CME)	NO BLOCKS	
Cocoa (ICE and NYSE LIFFE and NYMEX) (futures)	1,000	metric tons
Cocoa (ICE) (options)	3,500	metric tons
Coffee (ICE and NYMEX)	3,750,000	lbs.
Coffee (ICE) (options)	3,750,000	lbs.
Copper (COMEX)	2,500,000	lbs.
Corn (CBOT)	NO BLOCKS	bushels
Cotton No. 2 (ICE and NYMEX) (futures)	5,000,000	lbs.
Cotton No. 2 (ICE) (options)	12,500,000	lbs.
Distillers' Dried Grain (CBOT)	1,000	short tons
Dow Jones-UBS Commodity Index (CME)	3,000 times index	dollars
Ethanol (CBOT)	290,000	gallons
Feeder Cattle (CME)	NO BLOCKS	
Frost Index (CME)	200,000 times index	euros
Frozen Concentrated Orange Juice (ICE) (options)	1,500,000	lbs.
Gold (COMEX and NYSE Liffe) (futures)	20,000	troy oz.
Gold (COMEX and NYSE Liffe) (options)	30,000	troy oz.
Goldman Sachs Commodity Index (GSCI), GSCI Excess Return Index (CME)	30,000 times index	dollars
Gulf Coast Gasoline (NYMEX)	4,200,000	gallons
Gulf Coast Sour Crude Oil (NYMEX)	200,000	bbl.
Gulf Coast Ultra Low Sulfur Diesel (NYMEX)	4,200,000	gallons
Hard Red Spring Wheat (MGEX)	NO BLOCKS	
Hard Winter Wheat (KCBT)	NO BLOCKS	
Henry Hub Natural Gas (NYMEX) (futures)	1,000,000	mmBtu
Henry Hub Natural Gas (NYMEX)	5,500,000	mmBtu

(options)		
HSC Financial Basis Contract	25,000,000	dollars
Hurricane Index (CME)	20,000 times index	dollars
ICE Chicago Financial Basis Contract	25,000,000	dollars
International Skimmed Milk Powder (CME)	400	metric tons
Lean Hogs (CME)	NO BLOCKS	
Light Sweet Crude Oil (NYMEX)	100,000	bbl.
Live Cattle (CME)	NO BLOCKS	
Mid-C Financial Off-Peak Contract	25,000,000	dollars
Mid-C Financial Peak Contract	25,000,000	dollars
New York Harbor Blendstock Gasoline (NYMEX)	NO BLOCKS	
New York Harbor No. 2 Heating Oil (NYMEX) (futures)	50,000	bbl.
New York Harbor No. 2 Heating Oil (NYMEX) (options)	300,000	bbl.
New York Harbor Ultra Low Sulfur Diesel (NYMEX)	4,200,000	gallons
Nonfarm Payroll (CME)	NO BLOCKS	
NWP Rockies Financial Basis Contract	25,000,000	dollars
Oats (CBOT)	NO BLOCKS	
Palladium (NYMEX)	NO BLOCKS	
PG&E Citygate Financial Basis Contract	25,000,000	dollars
PJM WH Real Time Off-Peak Contract	25,000,000	dollars
PJM WH Real Time Peak Contract	25,000,000	dollars
Platinum (NYMEX)	NO BLOCKS	
Rainfall Index (CME)	10,000 times index	dollars
Rough Rice (CBOT)	NO BLOCKS	
Silver (COMEX and NYSE Liffe) (futures)	1,000,000	troy oz.
Silver (COMEX and NYSE Liffe) (options)	750,000	troy oz.
Snowfall Index (CME)	10,000 times index	dollars
Socal Border Financial Basis Contract	25,000,000	dollars
Soybean (CBOT)	NO BLOCKS	
Soybean Meal (CBOT)	NO BLOCKS	
Soybean Oil (CBOT)	NO BLOCKS	
SP-15 Financial Day-Ahead LMP Peak Contract	25,000,000	dollars
SP-15 Financial Day-Ahead LMP	25,000,000	dollars

Off-Peak Contract		
Sugar #11 (ICE and NYMEX) (futures)	5,000	metric tons
Sugar #11 (ICE) (options)	12,500	metric tons
Sugar #16 (ICE) (futures)	NO BLOCKS	
Sugar #16 (ICE) (options)	NO BLOCKS	
Temperature Index (CME)	400 times index	currency units
U.S. Dollar Cash Settled Crude Palm Oil (CME)	250	metrics tons
Waha Financial Basis Contract	25,000,000	dollars
Wheat (CBOT)	NO BLOCKS	
Wood Pulp (CME)	500	metric tons

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Issued in Washington, DC, on February 23, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioners Sommers and O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the block rule proposal, which promotes both pre-trade and post-trade transparency. The derivatives reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act, including bringing transparency to the swaps market, will lead to significant benefits for the real economy—that which makes up over 94 percent of private sector jobs in America. Transparency also helps all Americans who depend on pension funds, mutual funds, community banks and insurance companies.

[FR Doc. 2012–5950 Filed 3–14–12; 8:45 am]

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Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for Fiscal Year 2012; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2011–0207]

RIN 3150–AJ03

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2012

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2012, not including amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. President Obama signed the Consolidated Appropriations Act of 2012 on December 23, 2011, giving the NRC a total appropriation of $1,038.1 million for FY 2012. The FY 2012 proposed fee rule, based on the FY 2012 appropriation, would require the NRC to recover fees of approximately $909.5 million from licensees. After accounting for billing adjustments, the total amount to be billed as fees is approximately $901 million.

DATES: Submit comments on the proposed rule by April 16, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Because OBRA–90 requires that the NRC collect the FY 2012 fees by September 30, 2012, requests for extensions of the comment period will not be granted.

ADDRESSES: You may access information and comment submissions related to this proposed rulemaking, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0207. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0207. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1481, email: *Arlette.Howard@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0207 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rulemaking, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0207.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section V, Availability of Documents, of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0207 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

To obtain additional information on the NRC's FY 2012 budget request, commenters and others may review NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011), which describes the NRC's budget for FY 2012, including the activities to be performed in each program. This document is available on the NRC's

public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v27/.* The allocation of the budget to each fee class and fee-relief category is included in the publicly available work papers supporting this rulemaking (ADAMS Accession No. ML12040A341).

II. Background

Over the past 40 years the NRC, (and earlier as the Atomic Energy Commission (AEC), the NRC's predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws, the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483(a)) and OBRA–90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated from the Nuclear Waste Fund, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates and Commission policy which form the basis for the NRC's current fee policy and cost recovery methodology, which forms the basis for this rulemaking.

Establishment of Fee Policy and Cost Recovery Methodology

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under 10 CFR part 170 in two sections, § 170.21 and § 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale, depending on plant size, for construction permits and operating license fees, and annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services which included health and safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include inspection costs and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974), regarding the charging of fees by Federal agencies. The Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The Court, thus, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was under way, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc.* v. *FCC,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *FCC,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *FCC,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *FCC,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule. Based on the court decisions, the NRC developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the notice on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the **Federal Register** (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

The NRC's Current Statutory Requirement for Cost Recovery Through Fees

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual

fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the DC Circuit and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the **Federal Register** (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the **Federal Register** (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988, the NRC published an interim final rule in the **Federal Register** (53 FR 30423). The interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the **Federal Register** (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses were published in the **Federal Register** (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA–90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the NWF, through the assessment of fees. The OBRA–90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA–90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA–90, the NRC adjusted its fee regulations in 10 CFR part 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the **Federal Register** (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses were published in the **Federal Register** (55 FR 21173; May 23, 1990).

In FYs 1991–2000, the NRC continued to comply with OBRA–90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the DC Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007.

In addition to the requirements of OBRA–90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities.

The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees. In FY 2011, the NRC applied this methodology which would have resulted in an upper-tier small entity fee of $3,300, an increase of 74 percent or $1,400 from FY 2009, and a lower-tier small entity fee of $700, an increase of 75 percent or $300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small licensees and performed a trend analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, $2,300 was the maximum upper-tier small entity fee and $500 was the maximum lower-tier small entity fee. Therefore, in order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011 $2,300 should be the maximum upper-tier small entity fee and $500 should be the lower-tier small entity fee. For this fee rule, the small entity fees would remain unchanged. The next small entity biennial review is scheduled for FY 2013.

III. Proposed Action

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, presented in 10 CFR part 170 under the authority of the IOAA, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR part 171 under the authority of OBRA–90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. Under this rulemaking, the NRC would continue the fee cost recovery principles through the adjustment of fees without changing the underlying principles of the NRC fee policy in order to ensure that the NRC continues to comply with the statutory requirements of OBRA–90, the Atomic Energy Act, and the IOAA.

On December 23, 2011, President Obama signed the Consolidated Appropriations Act of 2012, giving the NRC a total appropriation of $1,038.1 million. Accordingly, in compliance with the Atomic Energy Act of 1954, as amended, and OBRA–90, the NRC proposes to amend its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2012 budget authority less the appropriations for non-fee items. The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking.

The NRC's total budget authority for FY 2012 is $1,038.1 million. The non-fee items excluded outside of the fee base includes $0.8 million for WIR activities and $26.7 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC is required to recover approximately $909.5 million in FY 2012 through 10 CFR part 170 licensing and inspection fees and through 10 CFR part 171 annual fees. This amount is $6.3 million less than the amount estimated for recovery in FY 2011, a decrease of less than 1 percent. The FY 2012 fee recovery amount is decreased by −$8.5 million to account for billing adjustments (i.e., for FY 2012 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2012 for prior year invoices). This leaves approximately $901 million to be billed as fees in FY 2012 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2012. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2011 final rule	FY 2012 proposed rule
Total Budget Authority	$1,054.1	$1,038.1
Less Non-Fee Items	−36.5	−27.5
Balance	1,017.6	1,010.6
Fee Recovery Rate for FY 2012	90%	90%
Total Amount to be Recovered for FY 2012	915.8	909.5
10 CFR Part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	3.0	2.3
Less Payments Received in Current Year for Previous Year Invoices (estimated)	−2.6	−10.8
Subtotal	0.4	−8.5
Amount to be Recovered Through 10 CFR Parts 170 and 171 Fees	916.2	901.0
Less Estimated 10 CFR Part 170 Fees	−369.3	−371.4
10 CFR Part 171 Fee Collections Required	546.9	529.6

The NRC estimates that $371.4 million will be recovered from 10 CFR part 170 fees in FY 2012, which represents a $2.1 million increase as compared to 10 CFR part 170 collections of $369.3 million for FY 2011. The NRC derived the FY 2012 estimate of 10 CFR part 170 fee collections based on the latest billing data available for each license fee class, with adjustments to account for changes in the NRC's FY 2012 budget, as appropriate. The remaining $529.6 million is to be recovered through the 10 CFR part 171 annual fees in FY 2012, which is a decrease of 3.2 percent compared to the estimated 10 CFR part 171 collections of $546.9 million for FY 2011. The change for each class of licensees affected is discussed in Section III.B.3 of this document.

The NRC plans to publish the final fee rule no later than June 2012. The FY 2012 final fee rule will be a ''major rule'' as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2012 will become effective 60 days after publication of the final rule in the **Federal Register**. Upon publication of the final rule, the NRC will send an invoice for the amount of the annual fees to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more. For these licensees, payment is due on the effective date of the FY 2012 final rule. Because these licensees are billed quarterly, the payment amount due is the total FY 2012 annual fee less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2012 falls before the effective date of the FY 2012 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2011 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2012 final rule will be billed for the annual fee at the FY 2012 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC no longer mails the proposed fee rule to licensees, but will send the proposed rule to any licensee or individual upon specific request. To request a copy, contact the Division of Planning and Budget, Budget Operations Branch II, Office of the Chief Financial Officer, at 301–415–1481. In addition to publication in the **Federal Register**, the proposed rule will be available on the Internet at *http://www.regulations.gov.*

The NRC is proposing to amend 10 CFR parts 170 and 171 as discussed in Section III.A and III.B of this document.

A. Amendments to Title 10 of the Code of Federal Regulations (10 CFR) Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

In FY 2012, the NRC is proposing to increase the hourly rate to recover the full cost of activities under 10 CFR part 170 and use this rate to calculate ''flat'' application fees.

The NRC is proposing to make the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is proposing to change the FY 2012 hourly rate to $274. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2012 hourly rate is less than one percent higher than the FY 2011 hourly rate of $273. The increase in the hourly rate is due primarily to higher agency direct budgeted resources, partially offset by a small increase in the number of direct full-time equivalents (FTEs). The following paragraphs described the hourly rate calculation in further detail.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) mission direct program salaries and benefits; (2) mission indirect program support; and (3) agency corporate support and the Inspector General (IG), by mission direct FTE hours. The mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee-relief activities.

In FY 2012, the NRC is using 1,371 hours per direct FTE, the same amount as FY 2011, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2012 fee rule. Based on this review of the most recent data available, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

	FY 2011 final rule	FY 2012 proposed rule
Mission Direct Program Salaries & Benefits	$337.4	$349.9
Mission Indirect Program Support	25.9	25.9
Agency Corporate Support, and the IG	474.1	472.3
Subtotal	837.4	848.0
Less Offsetting Receipts	−0.0	−0.0
Total Budget Included in Hourly Rate	837.4	848.0
Mission Direct FTEs	2,236	2,258
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)	273	274

As shown in Table II, dividing the FY 2012 $848 million budget amount included in the hourly rate by total mission direct FTE hours (2,257 FTE times 1,371 hours) results in an hourly rate of $274. The hourly rate is rounded to the nearest whole dollar.

2. Flat Application Fee Changes

The NRC is proposing to adjust the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $274, an increase of $1 from FY 2011. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2012. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990. The NRC last performed this review as part of the FY 2011 fee rulemaking. The higher hourly rate of $274 is the primary reason for the increase in application fees.

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2012 final fee rule would be subject to the revised fees in the final rule.

3. Administrative Amendments

This rule would make administrative changes for clarity as follows:

a. § 170.21, fee category G, change the title for the description from ''Other Production and Utilization Facility'' to read ''Other Production or Utilization Facility.''

b. § 170.31, revise fee schedule. Under 10 CFR part 170, the descriptions for categories 14A and 14B would be revised to add the phrase ''including MMLs'' in order to capture work activities outside of the category 17 description involving decommissioning actions and activities for master material license (MML) agencies (i.e., U.S. Department of Veteran Affairs, U.S. Navy, U.S. Air Force) and the fees would be subject to full cost. This methodology would ensure equitable fee distribution among licensees by charging the full cost for services over and above routine oversight activities to specific MMLs while minimizing the financial impact of annual fee distribution for all MMLs for the next biennial review.

In summary, the NRC is proposing to make the following changes to 10 CFR part 170:

1. Establish a revised professional hourly rate to use in assessing fees for specific services;
2. Revise the license application fees to reflect the FY 2012 hourly rate; and
3. Make administrative changes to §§ 170.21 and 170.31.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The NRC proposes to use its fee-relief surplus to decrease all licensees' annual fees based on their percentage share of the fee recoverable budget authority. This rulemaking would also make changes to the number of NRC licensees and establish rebaselined annual fees based on Pub. L. 112–10. The amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste (LLW) Surcharge

The NRC would use its fee-relief surplus to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC applies the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee-relief), to offset the total budget allocated for activities that do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee-relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2012 budget resources for the NRC's fee-relief activities are $91.1 million. The NRC's 10 percent fee-relief amount in FY 2012 is $101.1 million, leaving a $10 million fee-relief surplus that will reduce all licensees' annual fees based on their percentage share of the budget. The FY 2012 budget for fee-relief activities is higher than FY 2011, primarily due to a decrease in budgeted resources for nonprofit educational exemptions, international activities and support agreement states licensees and generic decommissioning reclamation activities. Also, the NRC has included medical isotope production under fee relief categories to capture program activity for medical isotope production facilities for regulatory basis development. The FY 2012 NRC medical isotope budget of approximately $3 million is not attributable to existing NRC licensees. The funding for this activity along with other activities not attributable to existing NRC licensees will be offset by the agency's 10 percent appropriation. These values are shown in Table III. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

Fee-relief activities	FY 2011 budgeted costs	FY 2012 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:		
a. International activities	$15.1	$9.0
b. Agreement State oversight	14.1	11.0
c. Scholarships and Fellowships	11.5	16.8
d. Medical Isotope Production	N/A	3.4
2. Activities not assessed 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions	13.3	11.2
b. Costs not recovered from small entities under 10 CFR 171.16(c)	5.6	6.5
c. Regulatory support to Agreement States	18.0	17.5
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	16.6	14.0
e. *In Situ* leach rulemaking and unregistered general licensees	1.2	1.7
Total fee-relief activities	95.4	91.1
Less 10 percent of NRC's FY 2011 total budget (less non-fee items)	−101.8	−101.1
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	−6.4	−10.0

Table IV shows how the NRC is allocating the $10 million fee-relief surplus adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY 2012, this allocation percentage was updated based on review of recent data which reflects the change in the support to the various fee classes. The allocation percentage of LLW surcharge decreased for operating reactors and increased for fuel facilities and materials users compared to FY 2011.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2012, the total budget allocated for LLW activity is $3.9 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2012

[Dollars in millions]

	LLW Surcharge		Fee-relief adjustment		Total
	Percent	$	Percent	$	$
Operating Power Reactors	60.0	2.3	86.0	−8.6	−6.3
Spent Fuel Storage/Reactor Decommissioning			3.3	−0.3	−0.3
Research and Test Reactors			0.2	0.0	0.0
Fuel Facilities	32.0	1.2	6.1	−0.6	0.6
Materials Users	9.0	0.3	2.8	−0.3	0.0
Transportation			0.5	−0.1	−0.0
Uranium Recovery			1.0	−0.1	−0.1
Total	100.0	3.9	100.0	−10.0	−6.1

2. Revised Annual Fees

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2012 to recover approximately 90 percent of the NRC's FY 2012 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The 10 CFR part 170 collections estimate for this proposed rule is $371.4 million, an increase of $2.1 million from the FY 2011 fee rule. The total amount to be recovered through annual fees for this proposed rule is $529.6 million, a decrease of $17.3 million from the FY 2011 fee rule. The required annual fee collection in FY 2011 was $546.9 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with the FY 2011 annual fees, the FY 2012 proposed rebaselined fees are lower for three classes of licensees, operating power reactors, spent fuel storage/reactors decommissioning facilities, and research and test reactors and higher for fuel facilities. Within the uranium recovery fee class, the annual fees decrease for most licensees. The annual fee increases for most fee categories in the materials users' fee class.

The NRC's total fee recoverable budget, as mandated by law, is $6.3 million lower in FY 2012 as compared with FY 2011. The FY 2012 budget was allocated to the fee classes that the budgeted activities support. The decrease is primarily due to the lower FY 2012 budget supporting the operating reactors, spent fuel storage, research and test reactors, partially offset by higher FY 2012 budget for uranium recovery facilities, materials users, and fuel facility reviews.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2012), the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2011 to FY 2012.

Table V shows the rebaselined fees for FY 2012 for a representative list of categories of licensees. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

Class/category of licenses	FY 2011 Annual fee	FY 2012 Proposed annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	$4,673,000	$4,525,000
Spent Fuel Storage/Reactor Decommissioning	241,000	211,000
Research and Test Reactors (Nonpower Reactors)	86,300	34,700
High Enriched Uranium Fuel Facility	6,085,000	6,116,000
Low Enriched Uranium Fuel Facility	2,290,000	2,302,000
UF_6 Conversion Facility	1,243,000	1,250,000
Conventional Mills	32,300	23,600
Typical Materials Users: Radiographers (Category 3O)	25,700	25,900
Well Loggers (Category 5A)	10,000	10,200
Gauge Users (Category 3P)	4,800	4,900
Broad Scope Medical (Category 7B)	45,400	46,100

The work papers that support this proposed rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0207, in ADAMS at ADAMS Accession No. ML12040A341, and in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. The work papers may also be examined at the NRC's PDR located at One White Flint North, Room O1–F22, 11555 Rockville Pike, Rockville, Maryland 20852.

Paragraphs a. through h. of this section describe the budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2012 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under § 171.16) are approximately $29 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2012, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document). The summary calculations used to derive this value are presented in Table VI for FY 2012, with FY 2011 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2011 final	FY 2012 proposed
Total budgeted resources	$55.7	$54.4
Less estimated 10 CFR part 170 receipts	−26.6	−26.6
Net 10 CFR part 171 resources	29.1	27.8
Allocated generic transportation	+0.6	+0.9
Fee-relief adjustment/LLW surcharge	+0.3	+0.6
Billing adjustments	−0.0	−0.5
Total required annual fee recovery	30.1	28.7

The decrease in total budgeted resources allocated to this fee class from FY 2011 to FY 2012 is primarily due to decreased support for licensing amendments and rulemaking. The NRC allocates the total required annual fee recovery amount is allocated to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (e.g., decommissioning or license termination) that results in it not being subject to 10 CFR part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). The NRC then totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). In FY 2012, the total effort factors for the Limited Operations fee category are being zeroed because the licenses in this fee category were terminated. This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2011.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2012

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	89 (38.5)	97 (47.0)

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2012—Continued

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
Low Enriched Uranium Fuel (1.A.(1)(b))	3	70 (30.3)	35 (17.0)
Limited Operations (1.A.(2)(a))	0	0 (0.0)	0 (0.0)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.3)	15 (7.3)
Hot Cell (1.A.(2)(c))	1	6 (2.6)	3 (1.5)
Uranium Enrichment (1.E)	2	51 (22.1)	49 (23.8)
UF_6 Conversion (2.A.(1))	1	12 (5.2)	7 (3.4)

For FY 2012, the total budgeted resources for safety activities, before the fee-relief adjustment is made, are $14.9 million. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of $13.3 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment $0.6 million is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2012 Proposed annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	$6,116,000
Low Enriched Uranium Fuel (1.A.(1)(b))	2,302,000
Limited Operations Facility (1.A.(2)(a))	0
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,184,000
Hot Cell (and others) (1.A.(2)(c))	592,000
Uranium Enrichment (1.E.)	3,288,000
UF_6 Conversion (2.A.(1))	1,250,000

b. Uranium Recovery Facilities

The total FY 2012 budgeted costs to be recovered through annual fees assessed to the uranium recovery class (which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16) are approximately $1 million. The derivation of this value is shown in Table IX, with FY 2011 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Proposed
Total budgeted resources	$7.15	$9.52
Less estimated 10 CFR part 170 receipts	*−6.09*	*−8.30*
Net 10 CFR part 171 resources	1.06	1.22
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	−0.05	−0.1
Billing adjustments	*0.00*	*−0.00*
Total required annual fee recovery	1.01	1.03

The increase in total budgeted resources allocated to this fee class from FY 2011 is primarily due to increased support of licensing activities for new applications and U.S. Department of Energy's (DOE's) Title I licensing activities underestimated 10 CFR part 170 collections.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted

largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2012, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount (UMTRCA Title I and Title II) general licenses:	
UMTRCA Title I budgeted costs less 10 CFR part 170 receipts	$ 751,298
10 percent of generic/other uranium recovery budgeted costs	38,509
10 percent of uranium recovery fee-relief adjustment	−10,464
Total Annual Fee Amount for DOE (rounded)	779,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	346,577
90 percent of uranium recovery fee-relief adjustment	−94,176
Total Annual Fee Amount for Other Uranium Recovery Licenses	252,401

The DOE fee increases by 1 percent in FY 2012 compared to FY 2011 due to slightly higher budgeted resources for UMTRCA Title I activities. The annual fee for other uranium recovery licensees decreases in FY 2012.

The NRC will continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $252,000 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2012 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are conventional uranium mills and heap leach facilities, uranium *In Situ* Recovery (ISR) and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.(A).2.a.)	1	150	150	9
Basic *In Situ* Recovery facilities (2.(A).2.b.)	5	190	950	59
Expanded In Situ Recovery facilities (2.(A).2.c.)	1	215	215	13
In Situ Recovery Resin facilities (2.(A).2.d.)	1	180	180	11
11e.(2) disposal incidental to existing tailings sites (2.(A).4.)	1	65	65	4
Uranium water treatment (2.(A).5.)	1	45	45	3
Total			1,605	

Applying these factors to the approximately $252,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII:

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

Facility type (fee category)	FY 2012 Proposed annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$23,600
Basic *In Situ* Recovery facilities (2.A.(2)(b))	29,900
Expanded In Situ Recovery facilities (2.A.(2)(c))	33,800
In Situ Recovery Resin facilities (2.A.(2)(d))	28,300
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	10,200
Uranium water treatment (2.A.(5))	7,100

c. Operating Power Reactors

The $448.6 million in budgeted costs to be recovered through FY 2012 annual fees assessed to the power reactor class was calculated as shown in Table XIII. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Proposed
Total budgeted resources	$783.6	$781.4
Less estimated 10 CFR part 170 receipts	−320.6	−320.6
Net 10 CFR part 171 resources	463.0	460.9
Allocated generic transportation	+0.9	+1.3
Fee-relief adjustment/LLW surcharge	−3.4	−6.3
Billing adjustments	0.4	−7.3
Total required annual fee recovery	460.9	448.6

The annual fee for power reactors decreases in FY 2012 compared to FY 2011 due to higher fee-relief adjustments/LLW surcharges and billing adjustments compared to FY 2011. The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate, resulting in an FY 2012 annual fee of $4,314,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2012 spent fuel storage/reactor decommissioning annual fee of $211,000. The total FY 2012 annual fee is $4,525,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2012, budgeted costs of $25.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Proposed
Total budgeted resources	$33.4	$29.4
Less estimated 10 CFR part 170 receipts	−4.0	−3.6
Net 10 CFR part 171 resources	29.4	25.8
Allocated generic transportation	+0.5	+0.7
Fee-relief adjustment	−0.2	−0.3
Billing adjustments	0.0	−0.3
Total required annual fee recovery	29.7	25.9

The value of total budgeted resources for this fee class is lower in FY 2012 than in FY 2011, due to decreased budgeted resources for spent fuel storage licensing and certification activities, higher fee-relief surplus and billing adjustment, and underestimated 10 CFR part 170 collections. The required annual fee recovery amount is

divided equally among 123 licensees, resulting in an FY 2012 annual fee of $211,000 per licensee.

e. Research and Test Reactors (Nonpower Reactors)

Approximately $139,000 in budgeted costs is to be recovered through annual fees assessed to the research and test reactor class of licenses for FY 2012. Table XV summarizes the annual fee calculation for research and test reactors for FY 2012. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Proposed
Total budgeted resources	$1.87	$1.68
Less estimated 10 CFR part 170 receipts	−1.54	−1.54
Net 10 CFR part 171 resources	0.33	0.14
Allocated generic transportation	+0.02	+0.03
Fee-relief adjustment	−0.01	−0.05
Billing adjustments	0.00	−0.02
Total required annual fee recovery	0.35	0.13

The decrease in annual fees from FY 2011 to FY 2012 is primarily due to decreased budgetary resources for nonbillable power reactors. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2012 annual fee of $34,700 for each licensee.

f. Rare Earth Facilities

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee will be published in FY 2012.

g. Materials Users

For FY 2012, budget costs of $30.4 million for material users are to be recovered through annual fees assessed to 10 CFR part 30 licensees. Table XVI shows the calculation of the FY 2012 annual fee amount for materials users licensees. The FY 2011 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Proposed
Total budgeted resources	$30.0	$30.6
Less estimated 10 CFR part 170 receipts	−1.6	−1.6
Net 10 CFR part 171 resources	28.5	29.0
Allocated generic transportation	+1.0	+1.5
Fee-relief adjustment/LLW surcharge	−0.0	+0.1
Billing adjustments	−0.0	−0.2
Total required annual fee recovery	29.5	30.4

The total required annual fees to be recovered from materials licensees increase in FY 2012, mainly because of increases in the budgeted resources allocated to this fee class for oversight activities and a higher LLW surcharge partially offset by higher billing adjustments compared to FY 2011. Annual fees for most fee categories within the materials users' fee class increase.

To equitably and fairly allocate the $30.4 million in FY 2012 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $22.2 million in general costs (including allocated generic transportation costs) and is 1.58 for FY 2012. The average inspection cost

is the average inspection hours for each fee category multiplied by the hourly rate of $274. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $8.0 million in inspection costs, and is 2.3 for FY 2012. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2012, approximately $110,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately $282,000 allocated to the materials users fee class (see Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document), and for certain categories of these licensees, a share of the approximately $335,000 in LLW surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2012 generic transportation budgeted resources to be recovered through annual fees. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Proposed
Total budgeted resources	$7.5	$9.2
Less estimated 10 CFR part 170 receipts	−3.4	−3.4
Net 10 CFR part 171 resources	4.1	5.9

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.'' The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2012 budgeted resources for generic transportation activities including those to support DOE CoCs is $5.9 million. The increase in 10 CFR part 171 resources in FY 2012 compared to FY 2011 is primarily due to an increase in budgeted resources for transportation regulatory programs. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC will continue to assess a separate annual fee under § 171.16, fee Category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if 4 CoCs benefit the entire research and test reactor class, but only 4 of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactor annual fees equals (4/31)*4, or 0.5 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2012

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total	87.5	100.0	$5.86
DOE	21.0	24.0	1.41
Operating Power Reactors	20.0	22.9	1.34
Spent Fuel Storage/Reactor Decommissioning	10.0	11.4	0.67
Research and Test Reactors	0.5	0.6	0.03
Fuel Facilities	13.0	14.8	0.87
Materials Users	23.0	26.3	1.54

The NRC is proposing to assess an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document), resulting in a total annual fee of $1,309,000 for FY 2012. This fee increase from FY 2011 is primarily

related to higher budgeted resources for the NRC's transportation activities.

3. Administrative Amendments

This rule would make certain administrative changes for clarity:

a. § 171.16(d), revise fee schedule. Under 10 CFR part 170, the descriptions for categories 14A and 14B would be revised to add the phrase ''including MMLs'' to capture work activities outside of the category 17 description involving decommissioning actions and activities for MML agencies (i.e., U.S. Department of Veteran Affairs, U.S. Navy, U.S. Air Force) and the fees would be subject to full cost. This methodology would ensure equitable fee distribution among licensees by charging the full cost for services over and above routine oversight activities to specific MMLs while minimizing the financial impact of annual fee distribution for all MMLs for the next biennial review.

b. Revise import and export licensing descriptions. The import and export licensing fee descriptions are updated for 15.F, 15.G, 15.J, 15K, and 15H for clarity of the rule.

c. Identify ''POL'' under 10 CFR 171.17, ''Proration,'' as ''possession-only-license;'' and

d. Revise the language for clarity under 10 CFR 171.17(a)(3) and (b)(3) for downgraded licenses.

In summary, the NRC is proposing to make the following changes to 10 CFR part 171:

1. Use the NRC's fee-relief surplus to reduce all licensees' annual fees, based on their percentage share of the NRC budget;

2. Establish rebaselined annual fees for FY 2012; and

3. Make administrative changes to §§ 171.16 and 171.17.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. Although regulations are exempt under the Act, the NRC is applying the same principles to its rulemaking documents. Therefore, the NRC has written this document, including the proposed amended and new rule language, to be consistent with the Plain Writing Act. In addition, where existing rule must be changed, the NRC has rewritten that language to improve its organization and readability. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this document.

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	PDR	Web	ADAMS
FY 2012 Work Papers	X		ML12040A341
Regulatory Flexibility Analysis			ML12046A885
Small Entity Compliance Guide			ML12041A317
NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011)	X		
NRC Form 526		X	

Vl. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using these standards is inconsistent with applicable law or is otherwise impractical. The NRC is proposing to amend the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2012, as required by the OBRA–90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Vll. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VIII. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document displays a currently valid Office of Management and Budget control number.

IX. Regulatory Analysis

Under OBRA–90, as amended, and the Atomic Energy Act of 1954, as amended (AEA), the NRC is required to recover 90 percent of its budget authority, or $909.5 million in FY 2012. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978 and more fee methodology guidelines in the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees by rulemaking without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA.

In this rulemaking, the NRC proposes to continue this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

X. Regulatory Flexibility Analysis

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2012 budget authority through the assessment of user fees. The OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees necessary for the NRC to recover its budget authority of 90 percent for FY 2012. This proposed rule would result in increases in the

annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in annual fees charged to others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. Additionally, the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, the ''Small Entity Compliance Guide'' is available via ADAMS Accession No. ML12041A317.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these amendments do not require the modification of, or additions to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Section 9701, Public Law 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Public Law 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Public Law 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Public Law 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Public Law 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $274 per hour.

3. In § 170.21, in the table, the heading for fee category G and fee category K are revised to read as follows:

§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
G. Other Production or Utilization Facility:	
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production or utilization facilities[4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$17,800
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a).	
Application—new license, or amendment; or license exemption request	9,600
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	4,400
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	2,700
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
Minor amendment to license	1,400

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

4. In § 170.31, the table is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities	Full Cost.
(c) Others, including hot cell facilities	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310].	$2,500.
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400].	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost.
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	Full Cost.
(c) Expanded In Situ Recovery facilities [Program Code(s): 11510]	Full Cost.
(d) In Situ Recovery Resin facilities [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost.
(f) Other facilities [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	Full Cost
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	$600.
C. All other source material licenses. Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$5,400.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$12,800.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$4,400.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02500, 02511, 02513]	$6,500.
D. [Reserved]	N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,400.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$61,200.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255]	$4,300.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$11,500.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$2,000.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$5,400.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$3,500.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$6,400.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$4,000.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130].	$1,500.
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$400.
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[5]	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$2,500.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	$1,500.
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$6,500.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$8,400.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$4,900.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$3,300.
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$21,800.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$8,800.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	$8,500.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$2,700.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$2,500.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$7,700.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$8,900.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$10,400.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$1,040.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$3,900.
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
2. Users.	
Application	$3,900.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities	Full Cost.
12. Special projects:	
Including approvals, preapplication/licensing activities, and inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including MMLs.	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$17,800.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.).	
Application—new license, or amendment; or license exemption request	$9,600.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,400.
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license, or amendment; or license exemption request	$2,700.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$1,400.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
Category 1 (Appendix P, 10 CFR part 110) Exports:	
F. Application for export of Appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain one government-to-government consent for this process. For additional consent see 15.H.).	
Application—new license, or amendment; or license exemption request	$15,100.
G. Application for export of Appendix P Category 1 material requiring Executive Branch review and to obtain one government-to-government consent for this process. For additional consents see 15.H.	
Application—new license, or amendment; or license exemption request	$8,800.
H. Requests for additional government-to-government consent requests in support of an export license application or active export.	
Application—new license, or amendment; or license exemption request	$5,500.
I. Requests for additional government-to-government consents in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request	$270.
Category 2 (Appendix P, 10 CFR part 110) Exports:	
J. Application for export of Appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request	$15,100.
K. Applications for export of Appendix P Category 2 materials requiring Executive Branch.	
Application—new license, or amendment; or license exemption request	$8,800.
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$5,500.
M. [Reserved]	N/A.
N. [Reserved]	N/A.
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
Minor Amendments (Category 1 and 2, Appendix P, 10 CFR part 110, Export and Imports):	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$1,400.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$2,300.
17. Master materials licenses of broad scope issued to Government agencies.	
Application [Program Code(s): 03614]	Full Cost.
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost.

[1] Types of fees—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) Application and registration fees. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) Licensing fees. Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) Amendment fees. Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) Generally licensed device registrations under 10 CFR 31.5. Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

5. The authority citation for part 171 continues to read as follows:

Authority: Section 7601, Public Law 99–272, 100 Stat. 146, as amended by sec. 5601, Public Law 100–203, 101 Stat. 1330, as amended by sec. 3201, Public Law 101–239, 103 Stat. 2132, as amended by sec. 6101, Public Law 101–508, 104 Stat. 1388, as amended by sec. 2903a, Public Law 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Public Law 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Public Law 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Public Law 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

6. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraphs (c)(2) and (d)(1), and paragraphs (d)(2), (d)(3), and (e) are revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2012 annual fee for each operating power reactor which must be collected by September 30, 2012, is $4,525,000.

(2) The FY 2012 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2012 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2012 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2012 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is $211,000.

(2) The FY 2012 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and an additional charge (fee-relief adjustment). The activities comprising the FY 2012 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2012 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2012 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2012 fee-relief adjustment allocated to the operating power reactor class of licenses is a $6.3 million fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2012 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a $60,055 fee relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, $6.3 million, by the number of operating power reactors (104).

(3) The FY 2012 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a $331,202 fee-relief surplus. The FY 2012 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a $2,693 fee-relief surplus. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2012 annual fees for licensees authorized to operate a research and test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$34,700

Test reactor—$34,700

7. In § 171.16, paragraph (d) and the introductory text of paragraph (e) are revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(d) The FY 2012 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2012 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2012 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$6,1116,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	2,302,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	[5] N/A
(b) Gas centrifuge enrichment demonstration facilities	1,184,000
(c) Others, including hot cell facilities	592,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers [Program Code(s): 22140]	3,600
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	7,300
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	3,288,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	1,250,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	23,600
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	29,900
(c) Expanded In Situ Recovery facilities [Program Code(s): 11510]	33,800
(d) In Situ Recovery Resin facilities [Program Code(s): 11550]	28,300
(e) Resin Toll Milling facilities [Program Code(s): 11555]	[5] N/A
(f) Other facilities [4] [Program Code(s): 11700]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]	10,200
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	7,100
B. Licenses that authorize only the possession, use, and/or installation of source material for shielding [Program Code(s): 11210]	1,800
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	12,400
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	43,500
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	12,400
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513]	16,900
D. [Reserved]	[5] N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	9,100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	15,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	140,900
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255]	8,300
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]	20,200
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	4,800
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	3,200
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	14,700
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	8,700
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	14,900

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	25,900
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 3140, 3130, 03220, 03221, 03222, 03800, 03810, 22130]	4,900
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium–226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: [14]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	9,000
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5) [Program Code(s): 02710]	4,900
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	15,500
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	32,000
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	14,900
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	10,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	46,100
7. Medical licenses:	
A. Licenses issued under 10 CFR parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	17,900
B. Licenses of broad scope issued to medical institutions or two or more physicians under 10 CFR parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110]	46,100
C. Other licenses issued under 10 CFR parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	8,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	9,000
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	12,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	13,900
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	16,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,600
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under 10 CFR part 71 of this chapter	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR parts 30, 40, 70, 72, and 76 of this chapter, including MMLs	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]	485,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,309,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	779,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2011, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of 10 CFR parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under Categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to the Department of Energy that are not funded from the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section, as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2012 fee-relief adjustment are as follows:

* * * * *

8. In § 171.17, paragraphs (a)(2), (a)(3), and (b)(3)(i) are revised to read as follows:

§ 171.17 Proration.

* * * * *

(a) * * *

(2) *Terminations.* The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the FY will be prorated on the basis of the number of days remaining in the FY after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license who request termination of the 10 CFR part 72 license and permanently cease activities authorized

by the license during the FY based on the number of days the license was in effect before receipt of the termination request. The annual fee for materials licenses with annual fees of $100,000 or greater for a single fee category for the current FY will be prorated based on the number of days remaining in the FY when a termination request or a request for a possession-only license is received by the NRC, provided the licensee permanently ceased licensed activities during the specified period.

(3) *Downgraded licenses.* The annual fee for a materials license with an annual fee of $100,000 or greater for a single fee category for the current FY, that is subject to fees under this part and downgraded on or after October 1 of a FY, is automatically prorated by the agency on the basis of the number of days remaining in the FY when the application for downgrade is received and approved by the NRC, provided the licensee permanently ceased the stated activities during the specified period.

* * * * *

(b) * * *

(3) * * *

(i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is automatically prorated on the basis of the date when the application for downgrade is received and approved by the NRC, provided the licensee permanently ceased the stated activities during the specified period.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 24th day of February 2012.

J.E. Dyer,

Chief Financial Officer.

[FR Doc. 2012–6153 Filed 3–14–12; 8:45 am]

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